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Supreme Court of the United States

AD HOC COMMITTEE OF KENTON COUNTY BONDHOLDERS,
Petitioners,

v.

DELTA AIR LINES, INC.,
KENTON COUNTY AIRPORT BOARD, UMB
BANK, N.A., AS TRUSTEE, POST EFFECTIVE DATE COMMITTEE
AS SUCCESSOR TO THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF DELTA AIR LINES, INC.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents three questions important to the administration of cases under the Bankruptcy Code, the first of which this Court recently granted review to decide but, for procedural reasons, did not do so. *See Travelers Indem. Co. v. Bailey*, --- U.S. ----, 129 S.Ct. 2195 (2009). In the bankruptcy of Delta Air Lines, Inc., the bankruptcy court modified the obligations owed by one of Delta's lessors, a non-debtor, to its non-debtor bondholders, and enjoined those bondholders from filing any claims against that lessor, even though the claims would have no direct impact on Delta's estate. The lower appellate courts not only implicitly accepted this result, but refused on "equitable" grounds to review that decision. The questions presented, therefore, are:

(1) Whether the Bankruptcy Code grants bankruptcy courts jurisdiction to permanently release non-debtors from claims of other non-debtors that have no impact on the *res* of a debtor's estate?

(2) Whether courts may use the judge-made doctrine of "equitable mootness" to deny Article III review of a bankruptcy decision even though a case or controversy remains, solely because any remedy fashioned on appeal would be, in the court's judgment, inequitable?

(3) Whether the Bankruptcy Code grants bankruptcy courts jurisdiction to restructure and modify bond debt owed by a non-debtor to other non-debtors, which has no impact on the *res* of a chapter 11 debtor's estate?

PARTIES TO THE PROCEEDING BELOW

The case caption contains the names of all parties who were parties in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, petitioners state as follows:

The Ad Hoc Committee of Kenton County Bondholders (the "Kenton County Bondholders Committee") is a private non-governmental party and hereby certifies that there are no corporate parents, affiliates and/or subsidiaries of said committee. The members of the Kenton County Bondholders Committee are as follows:

(i) Perella Weinberg Partners Xerion Master Fund Ltd. (f/k/a Xerion Partners II Master Fund Limited) is a Bermuda corporation, which has no corporate parent and whose affiliates and/or subsidiaries are Perella Weinberg Partners Xerion Offshore Fund Ltd. (f/k/a Xerion Partners II International Limited), Perella Weinberg Partners Xerion Fund LP (f/k/a Xerion Partners II L.P.), and Perella Weinberg Partners Xerion Capital LP (f/k/a Xerion Capital Partners LLC); no publicly held corporation holds 10% or more of its equity interests;

(ii) Bergen Capital, a division of Scott and Stringfellow, is a Virginia corporation, whose corporate parent is BB&T Corporation and which has no affiliates and/or subsidiaries; no publicly held corporation holds 10% or more of its equity interests;

(iii) United Equities Company LLC is a New York limited liability company, whose managing member is Moses Marx and which has no corporate parent, affiliates and/or

subsidiaries; no publicly held corporation holds 10% or more of its equity interests;

(iv) RSA, LLC is an Ohio limited liability company, whose managing member is Murray Sinclair, Jr. and which has no corporate parent, affiliates and/or subsidiaries; no publicly held corporation holds 10% or more of its equity interests;

(v) RBS Capital Ltd. is a Florida limited partnership, whose sole general partner is RBS Investment Management Inc. and sole limited partner is Roger Smith; no publicly held corporation holds 10% or more of its equity interests;

(vi) Carty & Co. is a Tennessee corporation, whose corporate parent is Carty Financial, Inc. and which has no affiliates and/or subsidiaries; no publicly held corporation holds 10% or more of its equity interests; and

(vii) Duncan-Williams, Inc. is a Tennessee corporation, whose corporate parent is Williams holding company and which has no affiliates and/or subsidiaries; no publicly held corporation holds 10% or more of its equity interests.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Petitioners, members of the Kenton County Bondholders Committee, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-6a) is reported at 309 F. App'x 455. The opinion of the district

court affirming the bankruptcy court's order (App. 7a-29a) is reported at 374 B.R. 516. The bankruptcy court's order (App. 32a-58a) is reported at 370 B.R. 537.

JURISDICTION

The judgment of the court of appeals was entered on February 9, 2009. (App. 1a.) A petition for rehearing *en banc* was denied on April 23, 2009. (App. 431a-432a.) This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The complete text of U.S. CONST. art. I, § 8, cl. 4, U.S. CONST. art. III, § 2, cl. 1, 11 U.S.C. §§ 105, 524, and 28 U.S.C. §§ 157, 158, 1334 is set forth in the Appendix. (App. 453a-498a.)

STATEMENT OF THE CASE

The Petitioners, all of them non-debtors, are a group of holders (or investment advisors to holders) of about $50 million of standard-form revenue collection municipal bonds (the "Bonds") issued by the Kenton County Airport Board ("KCAB"), also a non-debtor. KCAB issued the Bonds in 1992 to finance the construction of Terminal 3 (the "Terminal") at the Cincinnati/Northern Kentucky Airport. (App. 4a.) The Bonds were issued under an indenture governed by Kentucky law (the "Indenture") with KCAB as issuer and UMB Bank, N.A. (the successor of Star Bank, N.A.) as trustee (the "Trustee"). (App. 32a-33a.) The Petitioners own more than 10% of the total amount of the Bonds issued.

The debtor, Delta Air Lines, Inc. ("Delta," and with its affiliated debtors under Case No. 05-17923 (ASH) (Bankr.

S.D.N.Y.), the "Debtors"), and KCAB entered into several agreements providing that Delta would lease the Terminal from KCAB (the "Lease"), maintain the Terminal, and guarantee payments due under the Bonds (the "Guaranty"). (App. 8a-9a; 320a-421a; 422a-423a.) Under the Lease, KCAB assigned all payments received from Delta to the Trustee, who would then pay the principal and interest owing under the Bonds. (App. 8a; 33a.) Delta was not party to the Indenture, and although its payment obligations under the Bonds were non-recourse, KCAB remained obligated under the Bonds (the "Bondholders"). (App. 8a; 135a; 195a-197a.) Notably, if Delta failed to occupy any part of the Terminal, the Lease required KCAB to use its best efforts to re-let the unused portion (App. 394a-398a), and the Indenture provides that the proceeds of any such re-letting would be available to pay the Bondholders (App. 98a-99a). Thus, if Delta stopped paying rent for the Terminal for any reason, KCAB was obligated to find new tenants for the Terminal, and the rental payments from those new tenants would be used to pay the Bondholders until they were paid in full.

In September 2005, the Debtors filed petitions under Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York. (App. 4a-9a.) In April 2006, the Debtors sought to reject the Lease under section 365 of the Bankruptcy Code. (App. 9a.) The Trustee objected, joined by KCAB, but at the direction of a majority of Bondholders (not including the Petitioners) ultimately settled with Delta and KCAB, subject to bankruptcy court approval (the "Settlement"). (App. 33a-34a.) The Settlement canceled the Lease and Indenture and provided that (1) Delta and KCAB would enter into a new lease of the Terminal; and (2) purportedly in full satisfaction of the Bonds, the Bondholders would receive a note issued *by Delta* and an unsecured claim

against Delta (entitling Bondholders to vote on the Plan) for less than the balance owed under the Bonds. (App. 10a; 33a.) The Settlement also released and fully immunized KCAB and the Trustee from any liability to Bondholders for their breach of the Indenture (including liability for granting themselves releases) or for authorizing a blanket injunction enjoining all Bondholder claims against them. (App. 10a-11a.) Further, if any part of the Settlement was vacated or reversed on appeal, the parties had the option to void the Settlement. (App. 518a-519a.)

The Bondholders could not opt out of the Settlement. (App. 65a.) Moreover, the Debtors' disclosure statement (the "Disclosure Statement"), which was approved on February 7, 2007 and then distributed to Delta's stakeholders in connection with soliciting votes on Delta's proposed plan of reorganization (the "Plan"), did not describe the Settlement's terms. (App. 11a.)

The Petitioners objected to the Settlement. Nevertheless, on April 24 and 25, 2007, respectively, the bankruptcy court entered an order and decision (collectively, the "Settlement Order") authorizing the Settlement. (App. 11a.) On those same days, the bankruptcy court held a hearing and issued its order confirming the Plan. (App. 12a.) Among other things, the Settlement Order enjoined the Bondholders (including the Petitioners) from filing any claims they had not only against Delta (the debtor), but against the Trustee and KCAB as well. (App. 63a.)

The Petitioners appealed the Settlement Order to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 158, and sought a stay from the bankruptcy court pending appeal. (App. 12a.) The bankruptcy court acknowledged that several issues—including whether the Petitioners held certain claims against

the settling parties—remained unadjudicated, but found that the Settlement resolved them and denied the stay. (App. 444a-445a.) On April 27, 2007, Petitioners sought a stay in the district court, which was denied at a hearing held on May 2. (App. 433a-443a.) Although the Petitioners began preparing an appeal of that denial to the Second Circuit, the Respondents stipulated that the failure to request a stay from the court of appeals was not grounds for mootness. (App. 19a.) On May 3, 2007, Delta began making distributions. (App. 12a.)

On August 27 and 28, 2007, the district court entered an opinion and order finding that the Petitioners' appeal was equitably moot and affirming the Settlement Order. (App. 29a.) Pursuant to 28 U.S.C. § 1291, the Petitioners appealed the decision. After oral argument, on February 9, 2009, the Court of Appeals for the Second Circuit affirmed. (App. 1a-6a.) On April 23, the court denied rehearing *en banc*. (App. 431a-432a.)

In approving the Settlement, the lower courts rejected the Petitioners' argument that the bankruptcy court lacked jurisdiction to release KCAB and the Trustee from claims of the Petitioners that were not derivative of, and could not affect, the Debtors' bankruptcy estate. The bankruptcy court entered the releases because they were "extremely narrow in scope" and because all parties involved, including Delta and the Bondholders, "received substantial consideration." (App. 57a.) The district court agreed, finding further that the releases were proper because they "comprised valuable consideration for KCAB and the Bond Trustee in return for their agreement to give up indemnification rights against Delta under section 6.08 of the Lease." (App. 22a.) Significantly, the lower courts approved the releases even though they extended to claims that have no impact on

Delta's bankruptcy estate (even under the Lease's indemnity provision), including claims against the Trustee and KCAB based on their own wrongdoing—violations of various obligations to the Bondholders under the Indenture and the Lease. (App. 63a.)

The district court dismissed the Petitioners' appeal as equitably moot because the Plan had been "substantially consummated" and because a "comprehensive change in circumstances" had occurred. (App. 16a.) Among other reasons, the court found that ordering relief for the Petitioners would be inequitable because "a vacatur of the Settlement Order, even if it were possible, would . . . knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the Bankruptcy Court." (App. 19a.) The Second Circuit affirmed, holding that the district court "did not err—much less abuse its discretion." (App. 5a.) Neither court, however, found that the appeal was constitutionally moot because no case or controversy existed.

The lower courts also found that the bankruptcy court had authority to modify and discharge the debt obligations of a non-debtor, KCAB, under the Indenture even though no debtor was a party to the Indenture. The bankruptcy court found that it had jurisdiction to modify "the contractual relationship between KCAB and the Bond Trustee under the Indenture" because "[b]oth KCAB and the Bond Trustee are direct creditors of Delta [and] . . . [a]ll three of these agreements—the Lease, the Indenture and the Guaranty—are inextricably related to each other." (App. 53a.) In rejecting the Petitioners' argument that Section 9.06 of the Indenture prohibited the Trustee from compromising their individual rights to principal and interest (App. 46a-47a), the bankruptcy court found that it had jurisdiction to restructure

KCAB's Bond obligations because "the sole source of payment of the Bonds" was the Lease, and because the Bankruptcy Code "overrides private agreements" (App. 47a). Moreover, although it acknowledged Indenture Section 9.06 (requiring the consent of *all* bondholders to change the principal and interest under the bonds), the bankruptcy court held that the Trustee had the power to enter into the Settlement because (i) it had the right under the Indenture to litigate and settle on behalf of all Bondholders (App. 57a-58a); and (ii) a majority of Bondholders voted in favor of the Plan, under which they received distributions from the Settlement (App. 58a).

Similarly, the district court found it had "related to" jurisdiction under the Bankruptcy Code allowing it to restructure the debt of non-debtors under the Indenture and to bind non-debtors to that restructured debt because the settled litigation had "more than a 'conceivable effect' on the bankruptcy estate." (App. 21a.) Further, the district court found that, because the Indenture was "inextricably related" to the Lease and Guaranty, "the court could not resolve the creditor claims of KCAB and the Bondholders against Delta without a corresponding resolution of the relationship between KCAB and the Bondholders." (App. 21a.) Thus, "Delta's bankruptcy . . . also compromised the rights to payment under the Bonds and therefore overrides" Indenture Section 9.06. (App. 26a.) The district court agreed that the Trustee's right to litigate and settle and the Plan vote overrode individual bondholder rights under Section 9.06. (App. 26a.) Although finding that KCAB did not have re-let obligations to the Bondholders, the district court found that the Indenture "does appear to provide that money produced through re-letting the facilities should be applied toward the payment of the Bonds." (App. 28a.)

Because it found the appeal equitably moot, the Second Circuit did not reach the merits of the Petitioners' appeal, except to say that it would have affirmed the bankruptcy court's restructuring of KCAB's Indenture obligations for "substantially the reasons stated in the Bankruptcy Court's thorough and well-reasoned decision." (App. 6a.)

REASONS FOR GRANTING THE PETITION

As explained in the sections that follow, this Court should grant review: (I) to reconcile conflicting circuit decisions and establish the limit of a bankruptcy court's subject matter jurisdiction to alter private rights of non-debtors that are not derivative of, or otherwise directly related to, the debtor's rights or the *res* of the debtor's bankruptcy estate; (II) to reaffirm the constitutional necessity for Article III courts to review bankruptcy court decisions absent constitutional mootness; and (III) to decide whether the Bankruptcy Code grants bankruptcy courts the power to restructure the debt of non-debtors. If left unreviewed, the decisions below will create substantial uncertainty over the administration of bankruptcy cases in the United States at a time when, given the current global financial crisis, certainty under this Nation's insolvency regime is most vital.

I. The Court Should Grant Review To Resolve A Conflict Among The Circuits As To Whether The Bankruptcy Code Authorizes Bankruptcy Courts To Release Non-Debtors From Liability

Chapter 11 of the United States Bankruptcy Code is designed to help debtors reorganize their debt. To that end, if debtors comply with the plan confirmation requirements prescribed in the Bankruptcy Code, bankruptcy courts routinely release debtors of further liability to their creditors. The question presented here, and on which the courts of

appeal disagree, is whether a bankruptcy court may also permanently release the liability of *non-debtors* to other *non-debtors*—that is, parties who have not sought relief under the Bankruptcy Code.

This Court has never decided that issue. Last Term, this Court was confronted with the issue, but ultimately did not decide it. *See Travelers Cas. & Sur. Co. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.)*, 517 F.3d 52, 66 (2d Cir. 2008), *rev'd on other grounds*, *Travelers Indem. Co. v. Bailey*, --- U.S. ----, 129 S.Ct. 2195 (2009). This case presents a prime opportunity to resolve the inter-circuit conflict and remove the uncertainty surrounding bankruptcy courts' authority to grant such relief.

Whether the Bankruptcy Code authorizes a bankruptcy court to release non-debtors will become increasingly important as bankruptcy filings increase, and will be especially acute when large corporations seek chapter 11 relief and potential claims by non-debtors against other non-debtors present an obstacle to a successful reorganization.

As this Court has recognized, "[b]ankruptcy jurisdiction, at its core, is *in rem*." *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 362 (2006). Congress has provided bankruptcy courts jurisdiction to restructure bankruptcy petitioners' debts, giving them original jurisdiction not only over the petitioners' property and matters arising under the Bankruptcy Code or in a bankruptcy case, but also over matters "related to cases under title 11." 28 U.S.C. § 1334(b); *see also* 28 U.S.C. § 157(a)-(c) (providing that bankruptcy courts may decide "core" proceedings under the Bankruptcy Code and may hear and determine "non-core" proceedings "otherwise related to" a case under the Bankruptcy Code). But this jurisdiction "is grounded in, and limited by, statute[,]" and therefore "'related to' jurisdiction

cannot be limitless." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307-08 (1995). "[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988).

Within this statutory framework, the Second Circuit found that the bankruptcy court did *not* have subject matter jurisdiction to release a non-debtor by enjoining claims that do not "directly affect the *res* of the bankruptcy estate." *Travelers*, 517 F.3d at 66, *rev'd on other grounds*, 129 S.Ct. 2195; *see also Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995) (same).

This Court granted certiorari in *Travelers*. Ultimately, however, it did not decide the issue because it was not raised on direct appeal of the order approving the non-debtor release, but only twenty years later by collateral attack. *See Travelers*, 129 S.Ct. at 2206 n.7. Noting that its holding was "narrow," this Court stated that "[w]e do not resolve whether a bankruptcy court, in 1986 or today, could properly enjoin claims against nondebtor insurers that are not derivative of the debtor's wrongdoing." *Id.* at 2207. In the same discussion, the Court observed that, by enacting section 524(g), "Congress explicitly authorized bankruptcy courts, in some circumstances," to impose such injunctions, and that, "[o]n direct review today," such an injunction "would have to be measured against the requirements of § 524 (to begin with, at least)." *Id.* at 2207 (citing 11 U.S.C. § 524(g)(4)(A)(ii)). The Court also acknowledged that, if there had been a direct appeal of the previous order, "the Court of Appeals would indeed have been duty bound to consider whether the Bankruptcy Court had acted beyond its subject-matter jurisdiction." *Id.* at 2203.

Such an appeal is now before the Court. This case presents the same issue, on direct appeal, that was raised in *Travelers*—whether the Bankruptcy Code grants a bankruptcy court jurisdiction to release non-debtors from claims that would not affect the *res* of a chapter 11 debtor's estate.

A. The Circuit Courts, Construing The Same Provisions Of The Bankruptcy Code, Are Divided Over Whether They Authorize A Bankruptcy Court To Release Non-Debtors

Section 524(e) of the Bankruptcy Code provides that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." Some circuits have interpreted that section as prohibiting a bankruptcy court from releasing a non-debtor. Those circuits hold that section 105(a) of the Bankruptcy Code, which provides that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code,]" does *not* grant authority to release non-debtors. Other circuits, however, have held that under certain circumstances section 105(a) *does* authorize bankruptcy courts to release non-debtors from liability to other non-debtors, and that section 524(e) does not limit that authority.

This conflict among the circuits has prompted commentators to note that "[t]he propriety of third-party releases is thus an issue that cries out for Supreme Court guidance[.]" *See* Joshua M. Silverstein, *Hiding in Plain View: A Neglected Supreme Court Decision Resolves the Debate Over Non-Debtor Releases in Chapter 11 Reorganizations*, 23 EMORY BANKR. DEV. J. 13, 19 (2006).

1. The Ninth And Tenth Circuits Hold That, Except Where The Code Expressly Authorizes Non-Debtor Releases, Section 524(e) Prohibits Bankruptcy Courts From Discharging The Liabilities Of Non-Debtors

Two circuits have held that bankruptcy courts lack jurisdiction to release non-debtors from liability. The Ninth Circuit has held, "*without exception*, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors." *Resorts Int'l v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401 (9th Cir. 1995) (emphasis added), *cert. denied*, 517 U.S. 1243 (1996).

Indeed, the Ninth Circuit has rejected the argument that such authority can be found in section 105, concluding that "the specific provisions of section 524 displace the court's equitable powers under section 105 to order the permanent relief sought by [the debtor]" where such relief would discharge the liability of a non-debtor. *Am. Hardwoods, Inc. v. Deutsche Credit Corp. (In re Am. Hardwoods, Inc.)*, 885 F.2d 621, 626 (9th Cir. 1989). The court's conclusion was "buttresse[d]" by the addition of Bankruptcy Code section 524(g) under the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106, which specifically authorizes the release of non-debtors from liability in *asbestos* cases. *Lowenschuss*, 67 F.3d at 1402 n.6. "That Congress provided explicit authority to bankruptcy courts to issue injunctions in favor of the third parties in an extremely limited class of cases reinforces the conclusion that § 524(e) denies such authority in other, non-asbestos, cases." *Id.*

The Tenth Circuit, also relying on section 524(e), has held that a bankruptcy court cannot issue "a permanent injunction that effectively relieves the nondebtor from its own liability to the creditor." *Landsing Diversified Props.-II*

v. First Nat'l Bank & Trust Co. of Tulsa (In re W. Real Estate Fund, Inc.), 922 F.2d 592, 601-02 (10th Cir. 1990). Like the Ninth Circuit, the Tenth Circuit has held that "a bankruptcy court's supplementary equitable powers" under section 105(a) cannot provide an independent basis for releasing non-debtors from claims of other non-debtors, because it would be "inconsistent" with section 524(e). *Id.* at 601 ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." (quoting *Ahlers*, 485 U.S. at 206)).

2. Other Circuits Have Held That The Bankruptcy Code Authorizes Non-Debtor Releases Under Certain Circumstances

In contrast to the Ninth and Tenth Circuits, other circuits have held that a bankruptcy court *does* have the authority to release non-debtors from liability to other non-debtors, at least under certain circumstances.

The Seventh Circuit recently decided that section 524(e) did not bar the bankruptcy court from releasing non-debtors. *Airadigm Commc'ns, Inc. v. FCC (In re Airadigm Commc'ns, Inc.)*, 519 F.3d 640, 656 (7th Cir. 2008). The court held that the bankruptcy court had authority to release non-debtors under section 105(a), as well as section 1123(b)(6), which permits the court to include in a chapter 11 plan "'any other appropriate provision not inconsistent'" with the Bankruptcy Code. *Id.* at 657 (quoting 11 U.S.C. § 1123(b)(6)). The court "[held] that this 'residual authority' permits the bankruptcy court to release third parties from liability to participating creditors if the release is 'appropriate' and not inconsistent with any provision of the bankruptcy code." *Id.*

Also relying on sections 105(a) and 1123(b)(6), the Sixth Circuit has held that releases of non-debtors are permissible where certain factors are present. *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 658 (6th Cir.), *cert. denied*, 537 U.S. 816 (2002). That court has determined that section 524(e) explains the effect of a debtor's discharge under the Bankruptcy Code and "[i]t does not prohibit the release of a non-debtor." *Id.* at 657.

Similarly, the Second Circuit has decided that a bankruptcy court may release non-debtors upon "finding that truly unusual circumstances render the release terms important to success of the plan . . ." or "if the affected creditors consent." *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 142, 143 (2d Cir. 2005).

Both the Eleventh and the Fourth Circuits have permitted bankruptcy courts to release non-debtors. *See Munford v. Munford, Inc. (In re Munford, Inc.)*, 97 F.3d 449, 455 (11th Cir. 1996) (finding that releases enjoining indemnification and contribution claims against non-debtors were permitted under section 105 and Federal Rule of Civil Procedure 16 where they were integral to the debtor's settlement with the non-debtor and were fair and equitable); *Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 694, 702 (4th Cir.) (allowing permanent non-debtor releases necessary for a debtor's reorganization where the non-debtors provided consideration to mass tort victims), *cert. denied*, 493 U.S. 959 (1989).

Finally, the Third and Fifth Circuits have stated in *dicta* that a bankruptcy court may have authority to release non-debtors under certain circumstances. *See Gillman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203, 214 (3d Cir. 2000) (declining to "establish [its] own rule regarding the

conditions under which non-debtor releases and permanent injunctions are appropriate or permissible"); *Zale*, 62 F.3d at 760 (although finding that a bankruptcy court lacked jurisdiction to issue certain permanent non-debtor releases enjoining claims that were not derivative of the debtor's estate, suggesting that such releases—coupled with a channeling injunction—may not violate section 524(e)).

B. The Court Should Grant Review Because The Issue Is Crucial To The Reorganization Of Businesses Under The Bankruptcy Code

Resolving the issue now squarely before the Court is essential so that businesses reorganizing under chapter 11—as well as the many non-debtors whose rights may be significantly altered by those reorganizations—understand their respective rights as to non-debtor releases.

Fundamental to the chapter 11 restructuring process is consensus among the debtor's stakeholders in formulating a reorganization plan that addresses their divergent interests. *See* Lynn M. LoPucki & William C. Whitford, *Corporate Governance in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 141 U. PA. L. REV. 669, 681–82 (1993). In bankruptcy, expeditious settlement is favored over prolonged litigation. *See, e.g., Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939) (explaining that "[t]here frequently will be situations involving conflicting claims to specific assets which may, in the discretion of the court, be more wisely settled by compromise rather than by litigation"). Consequently, settlements will continue to play an important role in resolving chapter 11 cases and successfully reorganizing debtors.

An integral component of all settlements is the mutual release of claims and potential claims. *See* Jill E. Fisch,

Rewriting History: The Propriety of Eradicating Prior Decisional Law Through Settlement and Vacatur, 76 CORNELL L. REV. 589, 610 n.116 (1991) ("The usual settlement agreement provides for a resolution of all pending claims between the parties arising from the subject transaction and includes a release of such claims."). In a typical two-party, non-bankruptcy dispute, no defendant would settle a claim without obtaining a release to prevent the subsequent assertion of the same claim.

In the bankruptcy context, however, where the interests of many differently-situated litigants are implicated, the situation is more complex. A debtor, especially in large cases, is often faced with claims by a multitude of creditors. Making peace with them will likely involve one or more settlements approved by the bankruptcy court. Inevitably, non-debtor constituencies will bargain for releases from claims not only from the debtor, but also from other non-debtors.

Accordingly, the extent to which a bankruptcy court may approve releases of non-debtor liability without the consent of affected non-debtors is a question of central importance to all complex bankruptcy cases. *See* Thomas E. Patterson & Brendt C. Butler, *Do Bankruptcy Courts Have the Power to Issue Releases and Permanent Injunctions with Respect to Non-Debtor Parties in Chapter 11? Depends on Which Court You Ask*, SM014 ALI-ABA 415, 417 (2007) ("Over the last two decades . . . chapter 11 reorganization plans have increasingly included provisions releasing and/or permanently enjoining claims of creditors or other parties in interest against non-debtor parties such as the debtor's officers, directors, or non-debtor affiliates.").

Indeed, given the global financial crisis and the unprecedented number of significant chapter 11 cases on the

horizon, resolution of this question is especially important. *See* Ralph Brubaker, *Bankruptcy Injunctions and Complex Litigation: A Critical Reappraisal of Non-Debtor Releases in Chapter 11 Reorganizations*, 1997 U. ILL. L. REV. 959, 965 (1997) ("[T]he bankruptcy court is quickly becoming the forum for resolution of many of the largest and most complex mass litigations."). Over the last year, a number of high-profile, iconic American institutions already have filed chapter 11 petitions. *See, e.g.*, *In re Gen. Motors Corp.*, No. 09-50026 (Bankr. S.D.N.Y. filed Jun. 1, 2009); *In re Chrysler LLC*, No. 09-50002 (Bankr. S.D.N.Y. filed Apr. 30, 2009); *In re Wash. Mutual, Inc.*, No. 08-12229 (Bankr. D. Del. filed Sept. 26, 2008); *In re Lehman Bros. Holdings, Inc.*, No. 08-13555 (Bankr. S.D.N.Y. filed Sept. 15, 2008).

II. THE COURT SHOULD GRANT REVIEW TO DECIDE WHETHER, APPLYING THE JUDGE-MADE DOCTRINE OF EQUITABLE MOOTNESS, ARTICLE III JUDGES MAY DECLINE TO REVIEW BANKRUPTCY APPEALS THAT ARE NOT CONSTITUTIONALLY MOOT

The Court should also grant review to determine the existence and scope of the doctrine of "equitable mootness," which nearly every circuit has adopted. The doctrine serves to deprive parties of their right to Article III review even where the appealed bankruptcy court orders are not constitutionally moot. No basis for the doctrine exists in either the Constitution or the Bankruptcy Code.

A. EQUITABLE MOOTNESS EXPANDS THE DOCTRINE OF CONSTITUTIONAL MOOTNESS TO PERMIT ARTICLE III COURTS TO DECLINE TO HEAR ACTIVE CASES AND CONTROVERSIES

Federal courts have long applied the mootness doctrine to decline to review cases where it is *impossible* to provide

effective relief. *See Mills v. Green*, 159 U.S. 651, 653 (1895) (finding that federal courts have no authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before [them]"). The mootness doctrine is derived from the constitutional directive that federal court review is limited to actual cases or controversies. *See* Art. III, § 2, cl. 1; *see also North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (acknowledging the derivation of the doctrine in the case-or-controversy clause). Petitioners do not challenge that doctrine.

In the bankruptcy context, however, courts have expanded mootness beyond its constitutional roots by creating a new doctrine of "equitable mootness." Under this expanded mootness, an Article III court may decline to hear an appeal of a bankruptcy court order even though it is *not* constitutionally moot (because *some* effective relief could be fashioned), on the ground that fashioning any relief on appeal would be inequitable. *See, e.g., In re UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir. 1994) ("There is a big difference between *inability* to alter the outcome (real mootness) and *unwillingness* to alter the outcome ('equitable mootness').") (emphasis in original), *cert. denied*, 513 U.S. 999 (1994); *Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. Official Comm. of Unsecured Creditors of LTV Steel Co. (In re Chateaugay Corp.)*, 988 F.2d 322, 325 (2d Cir. 1993) ("[A]n appeal should also be dismissed as moot when, even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable.").

Beginning with the Ninth Circuit, a majority of courts of appeals have adopted the doctrine and have used it to decline appellate review of bankruptcy orders. *See Trone v. Roberts*

Farms, Inc. (In re Roberts Farms, Inc.), 652 F.2d 793, 797–98 (9th Cir. 1981); *see also, e.g.*, *In re Cont'l Airlines*, 91 F.3d 553, 558–59 (3d Cir. 1996) (*en banc*), *cert. denied*, 519 U.S. 1057 (1997); *Tompkins v. Frey (In re Bel Air Assocs.)*, 706 F.2d 301, 305 n.10 (10th Cir. 1983); *Metro Prop. Mgmt. Co. v. Info. Dialogues, Inc. (In re Info. Dialogues, Inc.)*, 662 F.2d 475, 476–77 (8th Cir. 1981) (*per curiam*).

The circuits have adopted several different, multi-factor tests for determining whether an appeal is barred by equitable mootness. Each test, however, presumes that a case or controversy still exists because some remedy can be fashioned, but allows the courts discretion to decline Article III review based on other factors.

In the Second Circuit, for example, an appeal is presumed to be moot once a confirmed chapter 11 plan has been substantially consummated. *See Aetna Cas. & Sur. Co. v. LTV Steel Co. (In re Chateaugay Corp.)*, 94 F.3d 772, 776 (2d Cir. 1996). That presumption may be rebutted only if several conditions are met: the court can order some effective relief; the relief will not affect the debtor's reemergence as a revitalized entity; the relief will not unravel intricate transactions and create an unmanageable situation for the bankruptcy court; the potentially adversely affected parties have notice and opportunity to participate; *and* the appellant pursued with due diligence available remedies to obtain a stay. *Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 952-53 (2d Cir. 1993) ("*Chateaugay II*"). The First Circuit has not articulated its own factors, but has tracked the *Chateaugay II* factors in dismissing an appeal as equitably moot. *Rochman v. Ne. Utils. Serv. Co. (In re Pub. Serv. Co.)*, 963 F.2d 469, 471, 476 (1st Cir. 1992), *cert. denied*, 506 U.S. 908 (1992). The Seventh Circuit, although rejecting the term "equitable

mootness," has dismissed an appeal based on reasoning similar to four of the *Chateaugay II* factors. *UNR*, 20 F.3d at 769 (finding it "[im]prudent to upset the plan of reorganization at this late date").

Other circuits have adopted substantially similar, multi-factor tests to determine whether to apply equitable mootness. *See, e.g., Curreys of Neb., Inc. v. United Producers, Inc. (In re United Producers, Inc.)*, 526 F.3d 942, 947-48 (6th Cir. 2008) (adopting a three-prong test); *MAC Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002) (applying a four-prong test); *In re GWI*, 230 F.3d 788, 800 (5th Cir. 2000) (applying a similar three-prong test); *First Union Real Estate Equity & Mortgage Invs. v. Club Assocs. (In re Club Assocs.)*, 956 F.2d 1065, 1069 n.11 (11th Cir. 1992) (considering a similar set of facts).

B. The Doctrine Of Equitable Mootness Conflicts With This Court's Jurisprudence And With The Constitutional Requirement That Article III Courts Decide Cases or Controversies

This Court has never recognized the judge-made doctrine of equitable mootness. To the contrary, the Court has held that an appeal is moot when "an event occurs while a case is pending on appeal that makes it *impossible* for the court to grant any effectual relief *whatever* to a prevailing party[.]" *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations omitted) (emphasis added). Even if reversal of an order cannot "return the parties to the *status quo ante*[,]" an appeal will not be considered constitutionally moot so long as "a court can fashion *some* form of meaningful relief in circumstances such as these." *Id.* at 12-13.

In the bankruptcy context, however, Article III courts have employed the doctrine of equitable mootness to decline to review bankruptcy orders even though some form of meaningful relief *can* be fashioned. *See Cont'l Airlines*, 91 F.3d at 567 (Alito, J., dissenting) ("The majority's decision in this case creates a bad precedent for our circuit. The majority adopts the curious doctrine of 'equitable mootness,' which it interprets as permitting federal district courts and courts of appeals to refuse to entertain the merits of live bankruptcy appeals over which they indisputably possess statutory jurisdiction and in which they can plainly provide relief."). Thus, the doctrine violates this Court's directive in *Church of Scientology* that an appeal to an Article III court is not moot where a "possible remedy" is available. 506 U.S. at 13.

Even if the doctrine had some constitutional foundation, no statutory basis exists on which to ground the courts' expansion of the mootness doctrine. Jurisdictional statutes provide that the district courts and the circuit courts of appeal "shall have jurisdiction" over final orders entered by bankruptcy courts, *see* 28 U.S.C. § 158(a) & (d); and those courts have a "virtually unflagging obligation" to exercise their statutory jurisdiction. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Neither 28 U.S.C. § 158 nor the Bankruptcy Code provides lower courts any discretion over which appeals to consider. Conversely, with respect to a narrow class of bankruptcy orders, Congress has expressly limited the relief available on appeal. *See, e.g.*, 11 U.S.C. § 363(m) (limiting the relief available on appeal of an order approving an unstayed sale of a debtor's property to a good faith purchaser); 11 U.S.C. § 364(e) (limiting the relief available on appeal of an order approving postpetition financing provided in good faith).

But no provision in the Bankruptcy Code authorizes Article III courts to decline to review live cases or controversies based on equitable mootness. Had Congress intended for the doctrine of equitable mootness to preclude the appellate review of other types of bankruptcy orders, it would have said so. *See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) (under the maxim of *expressio unius est exclusio alterius*, Congress's express inclusion of certain exceptions indicates an intent to preclude the recognition of others). Nonetheless, almost every circuit has adopted the doctrine. Indeed, some courts have even found that the bankruptcy court committed reversible error, but then have refused to reverse because of equitable mootness. For example, in *Metromedia*, the court concluded that the findings below "were insufficient" to support certain non-debtor releases and that such an error "would ordinarily be remedied by remand to the bankruptcy court." *Metromedia*, 416 F.3d at 143. But it then refused to vacate the order because it found the appeal equitably moot. *Id.* at 145.

Perhaps most disturbing, courts will dismiss appeals as equitably moot even where the appellant has sought expedited appeal and a stay pending appeal. *See, e.g.*, *UNR*, 20 F.3d at 769-70. Although courts initially were reluctant to apply the doctrine if an appellant had sought a stay, they now apply the doctrine even where the appellant sought a stay but was denied one. *Compare Roberts Farms*, 652 F.2d at 798 (finding that failure to seek a stay "creates a situation rendering it inequitable to reverse the orders appealed from"), *with UNR*, 20 F.3d at 770 (observing that "[a] stay not sought, and a stay sought and denied, lead equally to the implementation of the plan of reorganization[,]" which in turn leads to application of equitable mootness). Thus, under current authority in most circuits, equitable mootness will bar

review by an Article III court unless the appellant *obtains* a stay pending appeal. But requiring an appellant to obtain a stay of a substantial bankruptcy order is extremely burdensome: the appellant must demonstrate that it will be irreparably harmed absent the stay and that this relief will not substantially harm other parties. *See, e.g., Country Squire Assocs. of Carle Place, L.P. v. Rochester Comm. Sav. Bank (In re Country Squire Assocs. of Carle Place, L.P.)*, 203 B.R. 182, 183 (B.A.P. 2d Cir. 1996) (citing *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39 (2d Cir. 1992)).[1]

Indeed, because stays are granted only in narrow circumstances, appellants in such cases rarely preserve their appeal from equitable mootness. *See* Frank R. Kennedy & Gerald K. Smith, *Postconfirmation Issues: The Effects of Confirmation and Postconfirmation Proceedings*, 44 S.C. L. REV. 621, 650 n.76 (1993) (observing "that stays pending appeal are seldom granted, that appeals typically take a long time, that plan proponents frequently accelerate performance pending appeals to enhance the likelihood that the appeal will be rendered moot, and that the numerous rulings denying review of order approving sales are typically followed in appeals from confirmation orders") (citing Richard F. Broude, REORGANIZATIONS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE § 14.01[1] (1992)).

Moreover, even in the rare circumstances where an appellant obtains a stay, the movant may be required to post a substantial bond. *See* FED. R. BANKR. P. 8005 ("The district court or bankruptcy appellate panel may condition [a stay pending appeal] . . . on the filing of a bond or other

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[1] Often, the only showing of irreparable harm that an appellant can make is that, absent such relief, it will be equitably mooted. But, if no stay is obtained, the appellee will then argue that the appellant already has conceded that its appeal is moot.

appropriate security with the bankruptcy court."); *In re Farrell Lines, Inc.*, 761 F.2d 796, 797 (D.C. Cir. 1985) (*per curiam*). In some cases, the required bond must be large enough to protect all of the stakeholders in a multi-billion-dollar chapter 11 reorganization—a bond larger than all of the bond capacity likely available in the country. *See, e.g.*, *ACC Bondholder Group v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.)*, 361 B.R. 337, 369 (S.D.N.Y. 2007) (although granting a stay of consummation of a chapter 11 plan pending appeal, requiring appellants to post a $1.3 billion bond within 72 hours).

Equitable mootness, therefore, becomes a potent tool to insulate bankruptcy orders from appellate review, one that stakeholders can easily manipulate. So long as parties can "substantially consummate" a chapter 11 plan before an Article III court considers an appeal, the plan will almost always remain unreviewable. Indeed, as applied by the lower courts, equitable mootness may even insulate orders that bankruptcy courts lacked jurisdiction to issue.

This case illustrates how parties to chapter 11 bankruptcy proceedings, relying on the likely application of equitable mootness, can manufacture an effectively unreviewable order. The Respondents conditioned the Settlement not only on approval by the bankruptcy court under Federal Rule of Bankruptcy Procedure 9019, but also on the confirmation and consummation of the Plan, two events likely to lead to the application of equitable mootness. (*See* App. 506a). And, in the event that the doctrine was not applied or the Petitioners obtained a stay pending appeal, the Settlement gave Respondents the right to rescind the agreement. (*See* App. 518-519a.)

The ability of parties involved in chapter 11 proceedings to manipulate the jurisdiction of Article III courts in this way,

combined with the lower courts' willingness to apply equitable mootness even where appellants have made every effort to obtain a stay pending appeal of a bankruptcy order, defies Congress's intent to provide appellate review of bankruptcy orders under 28 U.S.C. § 158. Where substantial consummation is imminent, an appellant must meet the onerous requirements for obtaining a stay simply to retain the right to appellate review. Thus, equitable mootness stacks the deck against appellants so heavily that it invites parties to seek relief not authorized under the Bankruptcy Code or other applicable law.

C. The Doctrine Of Equitable Mootness, As Applied, Violates The Constitution's Separation Of Powers Clause

Exercising its authority under Article I, Section 8, Clause 4 "[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States[,]" U.S. Const. art. I, § 8, cl. 4, Congress established the bankruptcy courts to administer cases under the Bankruptcy Code. 28 U.S.C. § 151. In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), however, this Court found that the delegation of bankruptcy jurisdiction exclusively to bankruptcy courts established under Article I violated the Constitution. *Id.* at 87. In response to *Marathon Pipe Line*, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 (the "1984 Act"), Pub. L. No. 98-353, 98 Stat. 333 (codified as amended in titles 5, 11 and 28 of the United States Code), vesting original jurisdiction over bankruptcy proceedings with the district courts and referring such authority to the bankruptcy courts. *See* Pub. L. No. 98-353 §§ 101, 104, 98 Stat. 333 (codified as amended at 28 U.S.C. §§ 151-158, 1334 (1984)).

Under the 1984 Act, upon referral from the district courts, bankruptcy courts may decide "core" proceedings under the Bankruptcy Code, subject to appellate review by the district courts under the clearly erroneous standard. *See* 28 U.S.C. §§ 157(a), (b), 158(a); *see also Harman v. Levin*, 772 F.2d 1150, 1153 n.3 (4th Cir. 1985). Bankruptcy courts also are permitted to decide "non-core" proceedings "otherwise related to" a case under the Bankruptcy Code, and, if the parties consent, may issue final orders (subject to appellate review) upon referral from the district courts; otherwise, a final order may only be issued by the district court upon *de novo* review of the bankruptcy court's findings and conclusions. *See* 28 U.S.C. §§ 157(c), 158(a); *see also Cent. Vt. Pub. Serv. Corp. v. Herbert*, 341 F.3d 186, 190 (2d Cir. 2003). In essence, the 1984 Act "correct[ed] the constitutional flaw" of the Bankruptcy Code by ensuring that bankruptcy cases would be subject to the authority and review of an Article III court. 130 CONG. REC. S8891 (June 29, 1984) (remarks of Sen. Hatch), *reprinted in* 1984 U.S.C.C.A.N. at 590.

The doctrine of equitable mootness thwarts this congressional intent and, because it has been applied to preclude Article III review of an Article I court, violates the Constitution as construed in *Marathon Pipe Line*. When the doctrine of equitable mootness is applied, the only substantive review that bankruptcy stakeholders receive is from an Article I tribunal, the bankruptcy court. Neither the Bankruptcy Code nor any other federal statute sanctions such a result, and the appellate courts' refusal to exercise their jurisdiction over bankruptcy appeals is unconstitutional. *See Mills*, 159 U.S. at 653 (under the Article III mootness doctrine, dismissal of a case without consideration of the merits is required when no "effectual relief whatever" can be fashioned).

III. THE COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER THE BANKRUPTCY CODE PROVIDES BANKRUPTCY COURTS JURISDICTION TO RESTRUCTURE THE DEBT OF A NON-DEBTOR

Finally, the Court should grant review to determine whether "related to" jurisdiction under 28 U.S.C. § 1334(b) extends so far that bankruptcy courts have jurisdiction to restructure debts owed by non-debtors to other non-debtors.

A. The BANKRUPTCY COURTS' "RELATED TO" JURISDICTION IS LIMITED

As explained above, a bankruptcy court may hear matters that are "otherwise related to a case under title 11." *See* 28 U.S.C. §§ 157(c), 1334(b). Although Congress has not defined the words "related to," courts have interpreted Section 157 to provide bankruptcy courts with "jurisdiction over more than simple proceedings involving the property of the debtor or the estate." *Celotex*, 514 U.S. at 308 (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Nonetheless, "related to" jurisdiction is not and cannot be limitless and is necessarily "grounded in, and limited by, statute." *Id.* at 307-08; *see also Bd. of Governors, FRS v. MCorp Fin., Inc.*, 502 U.S. 32, 40 (1991) (stating that bankruptcy courts are vested with "limited authority"); *Ahlers*, 485 U.S. at 206.

In *Celotex*, this Court considered the tension between the bankruptcy courts' "comprehensive jurisdiction" to efficiently and expeditiously resolve "all matters connected with the bankruptcy estate" and the statutory limitations of that authority. 514 U.S. at 308. The Court noted that the Third Circuit, in *Pacor*, 743 F.2d at 994, had devised a test, which nearly every circuit had adopted, for determining whether "related to" jurisdiction exists. *Celotex*, 514 U.S. at

308 n.6. Under the test, a matter is "related to" a bankruptcy case if its outcome "could conceivably have any effect on the estate being administered in bankruptcy." *Id.* (citing *Pacor*, 743 F.2d at 994). More specifically, "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.* (citing *Pacor*, 743 F.2d at 994). The Court concluded, "whatever test is used, these cases make clear that bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor." *Id.*; *see also Travelers*, 129 S.Ct. at 2210 (Stevens, J., dissenting) ("A bankruptcy court has no authority, however, to adjudicate, settle, or enjoin claims against nondebtors that do not affect the debtor's estate."). Similarly, courts have held that a bankruptcy court lacks "related to" jurisdiction over a matter involving non-debtors where they would not result in direct or derivative liability to a debtor's bankruptcy estate. *See, e.g.*, *In re Combustion Eng'g*, 391 F.3d 190, 233 (3d Cir. 2005).

This Court, however, has not decided whether a matter involving non-debtors, which could have a "conceivable effect" on a debtor's estate, is nonetheless so remote that it would have "no effect" on the estate. Consequently, "[m]uch of the controversy about bankruptcy jurisdiction surrounds the reach of this 'related to' jurisdiction." *See* Jonathan C. Lipson, *Debt and Democracy: Towards a Constitutional Theory of Bankruptcy*, 83 NOTRE DAME L. REV. 605, 645 n.211 (2008).

B. This Case Provides An Opportunity To Clarify That "Related To" Jurisdiction Does Not Give Bankruptcy Courts The Power To Restructure The Debts Of Non-Debtors, Where The Debt Has No Impact On The *Res* Of A Debtor's Estate

This case presents the Court with an ideal opportunity to clarify that a bankruptcy court's "related to" jurisdiction does not authorize bankruptcy courts to restructure the debts of non-debtors that do not affect the *res* of a bankruptcy estate. Absent further guidance, the extent of "related to" jurisdiction will remain ambiguous, resulting in repeated if unintentional overextensions of jurisdiction by bankruptcy judges faced with ever more complex chapter 11 cases. *See* Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 750 ("*Pacor* has produced a state of affairs in which jurisdictional determinations are essentially arbitrary—with countless instances of identical factual and procedural postures producing diametrically disparate results on nominal application of the same 'test.'").

Indeed, the courts below, affirming the bankruptcy court's extension of its jurisdiction far beyond the limits that any other court has determined, thus sanctioned the bankruptcy court's departure from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's supervisory power.

Relying on the "conceivable effect" language of the *Pacor* test, the lower courts in this case held that "related to" jurisdiction was so broad that it gave the bankruptcy court jurisdiction to restructure bond debt issued not by the debtor (Delta), but by one of its lessors. (App. 21a-24a.) The lower courts concluded that the Indenture was "inextricably

related" to Delta's lease and guaranty obligations, even though no debtor was a party to it, it prohibited such a restructuring without every bondholder's consent, and if Delta vacated the premises, KCAB, the issuer, would remain liable to use any proceeds obtained from subsequent tenants to repay the Bonds. (App. 28a.)

In short, the bankruptcy court used Delta's bankruptcy to modify and discharge the bond repayment obligations of KCAB, a *non-debtor* that never petitioned for bankruptcy relief, and that would remain obligated to repay the Bonds from re-let proceeds if Delta stopped making lease payments for *any* reason. (App. 98a-99a; 394a-398a.) Thus, although KCAB has retained the Terminal, including the right to lease it to Delta or any other party, the bankruptcy court fully discharged KCAB from any further obligations (including re-let obligations) to the Bondholders. (App. 29a.)

The bankruptcy court reached that unprecedented result by finding that its "related to" jurisdiction extended so far as to restructure and discharge the private contract rights and obligations of KCAB, the Trustee and the Bondholders—all of them non-debtors -even though the Indenture itself mandated a contrary result. (App. 29a (ignoring the Bondholder's absolute right to seek their principal and interest under Section 9.06, modeled on Section 316 of the Trust Indenture Act (the "TIA"), 15 U.S.C. § 77ppp).) The bankruptcy court held that its jurisdiction over Delta's bankruptcy case trumped those established contract rights of non-debtors, which would have no effect on the *res* of the bankruptcy estate, because the Trustee, at the direction of a majority of Bondholders, could bind all Bondholders to a settlement. (App. 50a-52a.) However, because KCAB never filed for bankruptcy protection and no class was alleged or certified, the outcome below is contrary to bankruptcy law as

well as 70 years of bond-indenture law interpreting provisions identical to those contained in the Indenture and TIA Section 316.[2] *See, e.g.*, *Brady v. UBS Fin. Servs., Inc.*, 538 F.3d 1319, 1324-25 (10th Cir. 2008) (interpreting a nearly identical provision and finding that actions taken by a trustee at the direction of a majority cannot compromise an individual bondholder's rights under that provision absent consent); *In re Bd. of Dirs. of Multicanal S.A.*, 307 B.R. 384, 388-89 (Bankr. S.D.N.Y. 2004); *see also* 15 U.S.C. § 77bbb (setting forth necessity for regulation).

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[2] The only decisions cited by the bankruptcy court below finding that a majority of bondholders may compromise by settlement an individual bondholder's right to its principal and interest under provisions consistent with TIA Section 316, were class-action lawsuits certified under Federal Rule of Civil Procedure 23(c), and cases where the *issuer* had petitioned for bankruptcy. (App. 52a)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JULY 2009

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed FEB 9, 2009]

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the ninth day of February two thousand and nine.

PRESENT:

JOSÉ A. CABRANES,
SONIA SOTOMAYOR,
Circuit Judges,

JED S. RAKOFF,
District Judge.*

No. 07-3979-bk

AD HOC COMMITTEE OF KENTON COUNTY BONDHOLDERS,

Appellant,

v.

DELTA AIR LINES, INC., KENTON COUNTY AIRPORT BOARD, UMB BANK, N.A., as Trustee, POST EFFECTIVE DATE COMMITTEE as successor to the Official Committee of Unsecured Creditors of Delta Air Lines, Inc.,

Appellees.**

FOR APPELLANT:

THOMAS E. LAURIA (J. Christopher Shore, on the brief),
White & Case LLP, New York, NY.

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* The Honorable Jed S. Rakoff, of the United States District Court for the Southern District of New York, sitting by designation.

** The Clerk of Court is directed to amend the official caption in this case to conform to the listing of the parties above.

FOR APPELLEES:

MARSHALL S. HUEBNER (James I. McClammy, Benjamin A. Tisdell, Russell Capone, *on the brief*), Davis Polk & Wardwell, New York, NY, *for Appellee Delta Air Line Inc.*

WILLIAM W. KANNEL (Daniel S. Bleck, Matthew C. Hurley, Ian A. Hammel, *on the brief*), Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Boston, MA, *for Appellee UMB Bank, N.A.*

Selinda A. Melnik, Edwards Angell Palmer & Dodge, LLP, New York, NY (Wilbert L. Ziegler, Matthew C. Smith, Ziegler & Schneider, P.S.C., Covington, KY, *on the brief), for Appellee Kenton County Airport Board.*

Appeal from a judgment of the United States District Court for the Southern District of New York (John G. Koeltl, *Judge*).

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Appellant Ad Hoc Committee of Kenton County Bondholders appeals from an August 28, 2007 judgment of the District Court, affirming a Settlement Order entered by the Bankruptcy Court on April 24, 2007. We assume the parties' familiarity with the underlying factual and procedural history of the case, though we revisit key portions of that history here.

Appellant is a group of Bondholders, who hold approximately $50 million in face amount of the approximately $400 million in bonds issued by the Kenton Country Airport Board ("KCAB"), pursuant to a 1992 Trust Indenture, between KCAB and Star

Bank, N.A., the predecessor-in-interest to UMB Bank, N.A. (the "Trustee"), and guaranteed by Delta Air Lines, Inc. ("Delta"). On September 14, 2005, Delta filed a petition for bankruptcy protection under Chapter 11 of the Bankruptcy Code. On March 8, 2007, Delta filed a motion, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, seeking approval from the Bankruptcy Court of a settlement agreement, entered into by Delta, KCAB, and the Trustee. Appellant filed timely objections to the motion. On April 24, 2007, the Bankruptcy Court approved the settlement agreement. Appellant filed an appeal, arguing, *inter alia*, (1) that the Bankruptcy Court lacked jurisdiction to impose a settlement that released claims against KCAB, Delta, the Trustee, and other Bondholders; and (2) that, in the first instance, the Trustee lacked authority to bind dissenting Bondholders to a settlement, which reduced the principal and interest that would be repaid under the KCAB Bonds. Appellant also sought a stay pending appeal, which was denied by the Bankruptcy Court on April 26, 2007, and by the District Court on May 2, 2007.

On August 27, 2007, the District Court affirmed the Settlement Order. First, the District Court determined that appellant's claims were "equitably moot." Specifically, it determined that in light of the fact that "irreversible financial transactions . . . ha[d] occurred, and because Delta has entered into a whole new set of agreements," appellant could not show how vacating the Settlement Order, even if it were possible, would not create an unmanageable situation for the Bankruptcy Court. J.A. at 69. The District Court then noted that even if it were to consider the merits of appellant's arguments, contrary to appellant's assertions, (1) the Bankruptcy Court did have

jurisdiction to impose a settlement that released claims against KCAB, Delta, the Trustee, and other Bondholders, and (2) the Trustee did have authority to bind dissenting Bondholders to a settlement reducing the principal and interest that would be repaid under the KCAB Bonds. Appellant filed a timely notice of appeal. Before this Court, appellant argues that its appeal is not equitably moot, and renews the arguments made before the District Court and Bankruptcy Court.

We note that "[i]n an appeal from a district court's review of a bankruptcy court's decision, we conduct an independent examination of the bankruptcy court's decision." *In re Flanagan*, 503 F.3d 171, 179 (2d Cir .2007) (citing *In re Bethlehem Steel Corp.*, 479 F.3d 167, 172 (2d Cir. 2007)). We review the bankruptcy court's factual findings for clear error, and its legal conclusions *de novo*. *Id.* Additionally, a district court's determination that an appeal is "equitably moot" is (by definition) an equitable decision, and we review a district court's fashioning of equitable relief for abuse of discretion. *See Onwubiko v. United States*, 969 F.2d 1392, 1397 (2d Cir. 1992), *implicit overruling on other grounds recognized by Polanco v. U.S. Drug Enforcement Admin.*, 158 F.3d 647, 651 (2d Cir. 1998). *See generally Abrahamson v. Bd. of Educ. of Wappingers Falls Cent. Sch. Dist.*, 374 F.3d 66, 76 (2d Cir. 2004). Approvals of Bankruptcy Rule 9019 settlements are also reviewed for abuse of discretion. *In re Iridium Operating, LLC*, 478 F.3d 452, 461 n.13 (2d Cir. 2007).

Upon a review of the relevant case law and the record in this case, we conclude that the District Court did not err—much less abuse its discretion—in determining that appellant's claim is equitably moot.

In particular, we agree fully with the District Court's conclusion that

> [b]ecause of the irreversible financial transactions that have occurred, and because Delta has entered into a whole new set of agreements relating to its use of the Cincinnati/Northern Kentucy Airport as a hub of its operations, the appellants cannot show that a vacatur of the Settlement Order, even if it were possible, would not knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the Bankruptcy Court.

J.A. at 69 (internal quotation marks omitted). However, we note that even if we were to consider the merits of appellant's arguments, for substantially the reasons stated in the Bankruptcy Court's thorough and well-reasoned decision of April 25, 2007, we would affirm the Settlement Order.

CONCLUSION

We have considered all of appellant's claims on appeal and found them to be without merit. Accordingly, the judgment of the District Court is AFFIRMED.

FOR THE COURT,

Catherine O'Hagan Wolfe,
Clerk of Court

By: _____

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11
05-B-17923 (ASH)

In re DELTA AIR LINES, INC. *et al.*,
Debtors.

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07 Civ. 3968 (JGK)
KENTON COUNTY BONDHOLDERS COMMITTEE,
Appellants,

- against -

DELTA AIR LINES, INC. *et al.*,
Appellees.

OPINION AND ORDER

JOHN G. KOELTL, *District Judge*:

The appellants, a group of Bondholders who hold approximately $50 million in face amount of Bonds issued by the Kenton County Airport Board ("KCAB") pursuant to a 1992 Trust Indenture which covered the issuance of over $400 million in Bonds, appeal a Settlement Order entered by the United States Bankruptcy Court for this district approving a Settlement Agreement (the "Settlement") between Chapter 11 debtor Delta Air Lines ("Delta"), KCAB, and UMB Bank, N.A. ("UMB") as successor Trustee for the Bondholders under the 1992 Indenture. *See In re Delta Air Lines, Inc.*, No. 05 B 17923, 2007 WL 1805567 (Bankr. S.D.N.Y. Apr. 25, 2007). There is

jurisdiction to hear the appeal pursuant to 28 U.S.C. § 158(a)(1).

The Court has reviewed the Bankruptcy Court's thorough decision approving the Settlement and the arguments of the parties to this appeal. The Settlement Order is affirmed for substantially the reasons stated by the Bankruptcy Court and for the additional reasons discussed below.

I.

A.

The following facts are undisputed unless otherwise noted.

The KCAB Bonds ("Bonds") at issue in this appeal relate to Delta's use of and improvements made to the Cincinnati/Northern Kentucky Airport, which is a hub for Delta's operations. The KCAB Bonds were issued under a Trust Indenture (the "Indenture") dated February 1, 1992 between KCAB as issuer and Star Bank, N.A., the predecessor-in-interest to UMB, acting as Trustee. Concurrent with the issuance of the Bonds, Delta and KCAB entered into several interrelated agreements, including a Lease Agreement (the "Lease") between Delta and KCAB that called for rental payments over thirty years equal to the amounts due on the Bonds. The Indenture indicates that the Bonds are non-recourse with respect to KCAB (Indenture ¶¶ 2.05, 7.01, Ex. A to App. to Appellants' Br.; *see also* Lease ¶ 6.15, Ex. D to Appellants' Br.), and it assigns to the Bond Trustee KCAB's right to receive rental payments from Delta pursuant to the Lease, which the Indenture expressly references (Indenture preamble; *see also* Lease ¶¶ 4.03-4.04). Under a separate Guaranty to the Bond Trustee, Delta agreed that it would make

all of the payments due on the Bonds. (Guaranty ¶ 1, Ex. B to Appellants' Br.)

On September 14, 2005, Delta (along with other debtors not parties to this appeal) filed a petition for bankruptcy protection under Chapter 11 of the Bankruptcy Code. In late 2005, Delta informed KCAB and the Bond Trustee that it intended to reject certain of its contracts with KCAB, including the Lease, pursuant to section 365(a) of the Bankruptcy Code. *See* 11 U.S.C. § 365(a). On December 30, 2005, Delta, KCAB, and the Bond Trustee entered a Stipulation providing for a 60-day period to attempt to reach a consensual agreement, and in February 2006 the parties extended their negotiation period through May 1, 2006. When no agreement had been reached by April 28, 2006, Delta filed in the Bankruptcy Court a motion seeking rejection of the Lease and certain other agreements. Continued negotiations led the parties to enter a Forbearance Agreement on July 17, 2006 under which Delta made certain scheduled payments to the Bond Trustee and continued to use the airport facilities, and which provided that the parties would forbear from exercising any rights or remedies arising from Delta's failure to meet its full obligations under the Lease. The Forbearance Agreement was ultimately extended until the Settlement became effective.

During the negotiations between Delta, KCAB, and the Bond Trustee, the Bond Trustee issued sixteen Notices to the Bondholders that notified them that the Trustee was negotiating a settlement and entering into interim agreements which compromised Delta's payment of interest on the Bonds and that invited the Bondholders to join an unofficial committee of Bondholders ("Bondholders' Committee") to

participate in negotiations and strategy discussions. (*See* Ex. 2 to Decl. of James I. McClammy, June 22, 2007.) The Bondholders' Committee, consisting of Bondholders holding approximately sixty percent of the outstanding principal amount of the KCAB Bonds, gave a written Direction authorizing the Bond Trustee to agree to the Settlement on February 22, 2007. (*See* Ex. O to Appellants' Br.) The parties then announced the principal terms of the Settlement to the Bankruptcy Court at a hearing on February 22, 2007, and the next day the Bond Trustee sent notice of the Settlement terms to all Bondholders.

In summary, the Settlement Agreement provides that the Lease, Guaranty, and certain other agreements would be terminated and that the 1992 Bond Indenture would have no force outside the terms of the Settlement. Delta and KCAB would enter a new lease agreement and Delta would issue a new Note to the Bond Trustee, on behalf of the Bondholders, with the original principal amount of $85 million less amounts paid during the interim negotiations and bearing a fixed eight percent interest rate. The Bond Trustee, on behalf of the Bondholders, would have a $260 million allowed pre-petition, non-priority, unsecured claim against Delta. Delta would reimburse the Bond Trustee up to $2 million for fees and expenses incurred during the bankruptcy negotiations. Finally, Delta, KCAB, the Bond Trustee, and the Bondholders would release any claims or rights that each might have against the others with respect to the Bonds and the related agreements or the negotiated Settlement. The Settlement was expressly conditioned upon the Bankruptcy Court's entry of a Settlement Order approving the Settlement's terms and finding the terms fair and reasonable and in the best interest of Delta and its creditors, KCAB, the Bond Trustee,

and the Bondholders. The Settlement also provides that the terms of the Settlement are incorporated in Delta's Joint Plan of Reorganization and subject to creditor approval of the Plan. (*See* Settlement Agreement, Ex. P to Appellants' Br.)

On March 6, 2007, the appellants, an ad hoc group of Bondholders who object to the Settlement, sent a letter informing the Bond Trustee, Delta, and KCAB of their objections. On March 8, 2007, Delta submitted a motion pursuant to Bankruptcy Rule 9019 for the Bankruptcy Court to approve the Settlement. The appellants filed an objection to the Settlement Motion, but after limited expedited discovery and extensive argument, the Bankruptcy Court entered the Settlement Order on April 24, 2007, with a written decision following on April 25, 2007.

While negotiations related to the Settlement were under way, Delta's bankruptcy proceedings continued. On February 7, 2007, the Bankruptcy Court entered an Order approving the Disclosure Statement for the Plan of Reorganization, and Delta and the other debtors distributed ballots to vote on their Joint Plan of Reorganization in February of 2007. The ballots were issued before the Settlement was reached, but the Bondholders and other creditors were fully informed of the terms of the Settlement through a variety of means before the voting deadline of April 9, 2007. (*See* Exs. 2 & 3 to McClammy Decl.; Ex. R to Appellants' Br.) The Bondholders who voted on the Plan overwhelmingly approved of it, with 97.35% in dollar amount and 89.19% in number voting to accept the Plan.[1] After a hearing to consider

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[1] The appellants contest this tabulation of votes cast by the Bondholders, which the Bankruptcy Court cited, but they have provided no basis for finding that anything other than an

confirmation of the Joint Plan of Reorganization, the Bankruptcy Court issued an Order confirming the Plan on April 25, 2007. The Plan had an effective date of April 30, 2007, with initial distributions of shares of the reorganized Delta's stock to follow on May 3, 2007. Under the Settlement's terms, its "Closing Date" was coordinated to coincide with the May 3, 2007 date of initial distributions under the Plan.

Immediately after the Bankruptcy Court had approved the Settlement, the appellants filed a notice of appeal and a motion requesting an expedited appeal in this Court. On April 26, 2007, the appellants orally moved the Bankruptcy Court for a stay pending appeal, and the court denied that motion orally, with a formal order denying the motion following on April 27, 2007. The appellants then immediately moved this Court for a stay pending appeal, and after extensive argument on May 2, 2007, this Court denied the motion, finding among other things that the appellants had failed to establish a likelihood of success on appeal.

The next day, May 3, 2007, the reorganized Delta issued Notes in the aggregate amount of $65,875,000 pursuant to the Settlement. Delta also made an initial distribution of 5,848,221 shares of stock to the Bondholders in connection with their $260 million pre-petition claim under the Settlement. Delta also entered into a new Lease and other agreements with KCAB pursuant to the Settlement, and the settling parties have to date fully implemented the Settle-

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overwhelming majority of the voting Bondholders approved the Plan, in keeping with the overwhelming approval from every class of creditors who voted on the Plan. (*See* Certif. of Jane Sullivan, Ex. 4 to McClammy Decl.)

ment in accordance with its terms. (*See* Aff. of Billy W. Williams ¶¶ 4.) The new Notes and the shares of reorganized Delta stock are freely tradeable, and Delta made the distributions through financial intermediaries without knowing the actual identities of the Bondholders. (*Id.* ¶¶ 5-6.)

B.

Briefing on the current appeal proceeded according to a Court-ordered stipulated schedule governing both this appeal of the Settlement Order and the same appellants' related appeal of the Order Confirming the Joint Plan of Reorganziation (docketed as 07 Civ. 4148). (*See* Stipulation & Order Regarding Appeals, Docket No. 20.) This appeal is opposed by Delta, UMB as the successor Bond Trustee, KCAB, and the Post Effective Date Committee (as successor to the Official Committee of Unsecured Creditors in the Delta bankruptcy).

Pursuant to the terms of the Stipulation and Order Regarding Appeals, the American Bankers Association ("ABA") moved for leave to file a brief as amicus curiae in support of the appellee UMB. (Docket No. 15.) The motion is unopposed, and the Court grants leave for the ABA to file its brief as amicus curiae, which the Court has considered in connection with this appeal.

II.

The Court reviews the Bankruptcy Court's conclusions of law de novo and its findings of fact for clear error. *Citibank, N.A. v. Vebeliunas*, 332 F.3d 85, 90 (2d Cir. 2003); *In re Johns-Manville Corp.*, 340 B.R. 49, 58 (S.D.N.Y. 2006); *see also* Fed. R. Bankr. P. 8013. A bankruptcy court's finding pursuant to Bankruptcy Rule 9019 that a settlement is rea-

sonable is reviewed for abuse of discretion. *In re Iridium Operating LLC*, 478 F.3d 452, 461 n.13 (2d Cir. 2007); *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). The bankruptcy court will have abused its discretion if "no reasonable man could agree with the decision" to approve a settlement. *In re Frost Bros., Inc.*, 91 Civ. 5244, 1992 WL 373488, at *4 (S.D.N.Y. Dec. 2, 1992) (internal quotation marks omitted).

III.

As an initial matter, the appellees argue that the Court should dismiss the appeal as constitutionally or equitably moot.

An appeal must be dismissed as constitutionally moot when "an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party." *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). Even when a bankruptcy appeal is not constitutionally moot, it should be dismissed as equitably moot when, "even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable." *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 143 (2d Cir. 2005) (quoting *In re Chateaugay Corp.*, 988 F.2d 322, 325 (2d Cir. 1993) ("*Chateaugay I*")). The appellees focus on their argument that the appeal is equitably moot.

The Court of Appeals has recognized that bankruptcy appeals may be equitably moot in two situations: when an unstayed order has resulted in a "comprehensive change in circumstances," and when a reorganization is "substantially consummated." *Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y.

1994) (quoting *Chateaugay I*, 988 F.2d at 325, and *In re Chateaugay Corp.*, 10 F.3d 944, 952 (2d Cir. 1993) ("*Chateaugay II*")). When a reorganization has been "substantially consummated," as that term is defined in the Bankruptcy Code, *see* 11 U.S.C. § 1101(2), there is a "strong presumption" that an appeal of an unstayed order is moot. *Allstate*, 174 B.R. at 889; *see also In re Enron Corp.*, 326 B.R. 497, 502 (S.D.N.Y. 2005). This presumption may only be overcome when five circumstances are present:

> (a) the court can still order some effective relief; (b) such relief will not affect the re-emergence of the debtor as a revitalized corporate entity; (c) such relief will not unravel intricate transactions so as to knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the Bankruptcy Court; (d) the parties who would be adversely affected by the modification have notice of the appeal and an opportunity to participate in the proceedings; and (e) the appellant pursue[d] with diligence all available remedies to obtain a stay of execution of the objectionable order . . . if the failure to do so creates a situation rendering it inequitable to reverse the orders appealed from.

Chateaugay II, 10 F.3d at 952-53 (alteration in original) (internal quotation marks and citations omitted); *see also Allstate*, 174 B.R. at 889.

While the Court of Appeals has not expressly formulated a test for when a "comprehensive change of circumstances" renders it inequitable to hear an appeal, courts have found the same five equitable considerations listed above that can defeat a claim of

mootness in the context of "substantial consummation" to be instructive as well in the context of a "comprehensive change of circumstances." *See, e.g., Kassover v. Gibson*, 02 Civ. 7978, 2003 WL 21222341, at *2 (S.D.N.Y. May 27, 2003), *aff'd*, 98 Fed. Appx. 30 (2d Cir. 2004); *Allstate*, 174 B.R. at 889.

The Joint Plan of Reorganization has now been confirmed and appears to be "substantially consummated." However, because this appeal relates only to the validity of the Settlement Order, and not the full Plan, it is not clear that the "substantially consummated" prong applies. There has certainly been a "comprehensive change in circumstances," and in any event the distinction makes little difference because the same five factors guide the analysis. The appellants do not contest that the parties have fully implemented the Settlement according to its terms, including entering into several new agreements relating to Delta's use of the Cincinnati/Northern Kentucky Airport, and that Delta has distributed millions of dollars in freely tradeable stock through financial intermediaries that cannot be reversed. The Court then looks to the five factors listed above to determine whether the appellants can show that the Court should not find their appeal equitably moot.

The first *Chateaugay II* factor requires that some effective relief be available. The appellants contend that it is not necessary to unwind the financial transactions that have transpired, but that the Court can fashion some relief by vacating the Settlement Order and leaving it to the appellees either to ratify the agreement without Bankruptcy Court approval of the releases or to reform the Settlement in a manner that addresses the appellants' objections. In effect, this argument says that relief is possible even if the

transactions cannot be unwound because a vacatur would nullify the releases and allow the appellants to assert claims for damages against KCAB or UMB as the Bond Trustee. But to nullify the releases while leaving the remainder of the consummated Settlement intact would ignore the tradeoff that allowed the parties to settle in the first instance and would treat a non-severable provision of the Settlement Agreement as dispensable.

The cases the appellants rely on do not support the idea that effective relief is available here. In *LTV Corp. v. Aetna Cas. & Sur. Co.*, 167 B.R. 776 (S.D.N.Y. 1994) ("*Chateaugay III*"), the court declined to dismiss an appeal of a settlement order as moot, but there was no showing that the deal involved financial transactions that could not be unwound because it only involved a surety's payment to the debtor in return for a release of claims. *Id.* at 778-79. In *Feld v. Zale*, 62 F.3d 746 (5th Cir. 1995), the Court of Appeals for the Fifth Circuit found that a bankruptcy court did not have jurisdiction to enjoin certain third-party tort claims, which would not have affected the bankruptcy estate, as part of its approval of a settlement between the debtor and an insurer. *Id.* at 755-57. However, because the court did not discuss equitable mootness at all, the case is inapposite.

The Bankruptcy Court found that the releases were a necessary part of the Settlement reached by the parties. *See In re Delta*, 2007 WL 1805567 at *12-*13. (*See* Settlement Agreement § 3.01 ("Except as the Parties may otherwise agree, all provisions of this Agreement are essential, non-severable terms . . . .").) The distributions under the Settlement Agreement have already been made and the securities distributed have likely been traded to parties

who are not before the Court and those distributions cannot reasonably be undone and the appellants do not seek to do so. While they do seek to undo the releases of claims against KCAB and the Trustee, those releases were an integral part of the entire Settlement and cannot equitably be undone in isolation from the distributions to the Bondholders which the appellants do not seek to reverse. *Cf. In re Metromedia*, 416 F.3d at 145 (deeming appeal equitably moot where appellants sought to eliminate releases which were essential to the bargain struck); *In re Enron Corp.*, 326 B.R. at 503 (finding appeal of exculpation provision moot where the bankruptcy court found the provision necessary for the negotiation of the reorganization plan); *In re Texaco Inc.*, 92 B.R. 38, 45-50 (S.D.N.Y. 1988) (finding appeal seeking to sever and rescind releases moot because releases were part of an "integrated settlement" and their rescission would "undermine the entire reorganization").

As for the other *Chateaugay II* factors, The appellees assert that the absence of the vast majority of KCAB Bondholders from this proceeding would render it inequitable to undo the Settlement to benefit a small number of dissenting Bondholders. Courts have found that the effect on creditors who are not party to an appeal in analogous circumstances weighs in favor of finding an appeal moot. *See In re Revere Copper & Brass, Inc.*, 78 B.R. 17, 18, 22 (S.D.N.Y. 1987). Similarly, while the Settlement comprises only a small part of Delta's Joint Plan of Reorganization, its undoing would complicate Delta's rights to an important hub of its operations and therefore risks having some negative effect on Delta's vitality as a reorganized entity. These considerations

are not alone determinative, but they contribute to a finding of equitable mootness.

Because of the irreversible financial transactions that have occurred, and because Delta has entered into a whole new set of agreements relating to its use of the Cincinnati/Northern Kentucky Airport as a hub of its operations, the appellants cannot show that a vacatur of the Settlement Order, even if it were possible, would not "knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the Bankruptcy Court." *Metromedia*, 416 F.3d at 144 (quoting *Chateaugay II*, 10 F.3d at 953).

Finally, as to the fifth *Chateaugay II* factor, the appellants did avail themselves of their opportunity to seek a stay of the Settlement Order, both before the Bankruptcy Court and before this Court.[2] But the appellants' diligence alone is insufficient to avoid equitable mootness in light of the unavailability of effective relief and the other considerations discussed above. *See In re UNR Indus.*, 20 F.3d 766, 769-70 (7th Cir. 1994) ("[A] stay not sought, and a stay sought and denied, lead equally to the implementation of the plan of reorganization."); *cf. In re Gucci*, 126 F.3d 380, 383, 387-89 (2d Cir. 1997) (appeal of sale pursuant to bankruptcy court auction was moot despite two unsuccessful attempts to obtain a stay).

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[2] While the appellants did not seek a stay from the Court of Appeals after this Court denied a stay on the eve of the Settlement's Closing and the date of initial distributions under the Settlement and the full Joint Plan of Reorganization, the parties agree in light of the time constraints that this fact is not grounds for mootness.

In their reply, the appellants argue that the appellees manipulated the process to render any appeal moot by structuring the Settlement with releases of claims and a rapid Closing. However, the appellees have shown there was a good reason to time the Settlement Closing to coincide with initial distributions under the Joint Plan or Reorganization so that the KCAB Bondholders could have the benefit of freely trading the distributed stock at the same time as other creditors to avoid market risk. Furthermore, the timing of the Settlement did not foreclose the appellants from making strenuous objections before the Bankruptcy Court and indeed seeking a stay before this Court. The timing and structure of the Settlement therefore provides no basis for entertaining an appeal that cannot result in equitable or effective relief.

For all of these reasons, the Court concludes that it would be inequitable to hear this appeal and finds it equitably moot. Nonetheless, the Court considers the merits of the appeal below "so that there is no doubt as to the finality of the Bankruptcy Court's Order." *Allstate*, 174 B.R. at 891.

IV.

On the merits of their appeal, the appellants repeat a variety of arguments that the Bankruptcy Court considered and rejected, although they have reformulated several of these arguments. The core of the appellants' position is (i) that the Bankruptcy Court had no jurisdiction or power to impose a Settlement that released claims against KCAB, Delta, the Trustee, and other Bondholders, and (ii) that the Trustee had no authority in the first instance to bind dissenting Bondholders to a Settlement reducing the principal and interest that would be repaid under the

KCAB Bonds. The appellants also devote much attention to alleged rights they have against KCAB to require it to "re-let" Delta's airport space and to pay the proceeds to the Bondholders. These issues are addressed in turn.

A.

The appellants' argument that the Bankruptcy Court lacked subject matter jurisdiction to order the Settlement lacks merit for the reasons the Court discussed in its denial of the motion for a stay. The Bankruptcy Court plainly had jurisdiction under 28 U.S.C. §§ 1334(b) to approve this Settlement binding non-debtors because the litigation that was settled had more than a "conceivable effect" on the bankrupt estate; it in fact had a very clear effect on Delta's obligations. *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992) (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)); *see also In re Worldcom Inc. Secs. Litig.*, 293 B.R. 308, 318 (S.D.N.Y. 2003). The Bankruptcy Court correctly found that the Indenture and the associated Lease and Guaranty are "inextricably related to each other" and that the court could not resolve the creditor claims of KCAB and the Bondholders against Delta without a corresponding resolution of the relationship between KCAB and the Bondholders. *In re Delta*, 2007 WL 1805567 at *11.

The appellants also argue more specifically that the Bankruptcy Court lacked jurisdiction or power to approve the releases of claims against the non-debtors, which are contained in section 3.02(f) of the Settlement Agreement. As the Court found previously in denying the stay, this argument has no merit. A Bankruptcy Court may approve the release of claims against third parties where those releases

played an "important part" in a debtor's reorganization plan. *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992); *see also Bartel v. Bar Harbor Airways, Inc.*, 196 B.R. 268, 274 (S.D.N.Y. 1996). The *In re Metromedia* decision relied on by the appellants does not bar the releases in this case. The Bankruptcy Court found that the releases of claims against KCAB, Delta, the Bond Trustee, and the Bondholders at issue here are narrowly drawn and are necessary to prevent relitigation of precisely the claims that were negotiated and resolved by the Settlement Agreement.[3] *See In re Delta*, 2007 WL 1805567 at *12- *13. It is furthermore clear that they comprised valuable consideration for KCAB and the Bond Trustee in return for their agreement to give up indemnification rights against Delta under section 6.08 of the Lease, and therefore the releases are of the kind *In re Metromedia* expressly lists as acceptable. 416 F.3d at 142.

The appellants raise several new arguments that essentially repackage their assertion that the Bankruptcy Court lacked jurisdiction and power to approve this Settlement. First, the appellants assert that the Bankruptcy Court's actions denied them their constitutional right to due process because the Settlement Order's release of claims eliminates their ability to bring claims as individual Bondholders against the Bond Trustee, KCAB, or other Bondholders and they were thus never afforded an opportunity to adjudicate those claims. In particular, the appellants point to their alleged right to sue the

[3] The Bond Trustee points out the irony that the appellants' actions in this very case show why parties would rarely agree to settle without being released from claims relating to the settlement itself.

Bond Trustee for failing to act prudently in accordance with section 10.18 of the Indenture and to their right to hold KCAB accountable for "re-let proceeds" they allege that KCAB must pursue under section 8.07(c) of the Lease, both rights which are expunged under the Settlement.

This due process argument was not made to the Bankruptcy Court below. Because the argument was raised for the first time on appeal, the Court can decline to hear it. *See, e.g., Adelphia Bus. Solutions, Inc. v. Abnos*, 482 F.3d 602, 607 (2d Cir. 2007); *Gulino v. N.Y. State Educ. Dep't*, 460 F.3d 361, 380 n.22 (2d Cir. 2006). In any event, the argument has no merit because the Bankruptcy Court gave the appellants notice and an opportunity for both expedited discovery and a hearing on their objections to the proposed Settlement, and obviously the appellants availed themselves of this opportunity. It is no answer to say that the Bankruptcy Court proceedings did not adjudicate the alleged claims of individual Bondholders because the matter before the Bankruptcy Court was a motion pursuant to Bankruptcy Rule 9019 to approve a Settlement, not an adjudication on the merits of individual tort or contract claims, and the Bankruptcy Court concluded that the Bond Trustee was authorized to enter into the Settlement on behalf of all Bondholders. *See In re Purofied Down Prods. Corp.*, 150 B.R. at 522-23 ("[L]ittle would be saved by the settlement process if bankruptcy courts could approve settlements only after an exhaustive investigation and determination of the underlying claims.").

Second, the appellants argue that the Bankruptcy Court failed to abide by certain procedural rules in effectively adjudicating their claims as individual

Bondholders without an adversary proceeding. This argument also was not raised below and is therefore waived, *see Gulino*, 460 F.3d at 380 n.22, and moreover the argument lacks merit because the appellants had ample notice and opportunity to voice their views on the Settlement generally and on the release of claims specifically.

For all of these reasons, and for the reasons stated by the Bankruptcy Court, the appellants' arguments that the Bankruptcy Court lacked either jurisdiction or power to approve the Settlement, and in particular to approve the releases, are without merit.

B.

The appellants also continue to argue, as they did before the Bankruptcy Court and before this Court on the stay, that the terms of the Indenture did not authorize the Bond Trustee to settle for less than the full value of the Bonds over the objection of some Bondholders.[4] The appellants contend that so-called "non-impairment" provisions in sections 9.06, 12.03(a), 12.06, and 12.07 of the Indenture protect minority rights by prohibiting the impairment of a Bondholder's right to receive payment of the principal and interest on a Bond or to institute suit for the enforcement of any past-due payment without the consent of that Bondholder.

Considering all of the relevant provisions of the Indenture, the Bankruptcy Court correctly found that the Indenture did not bar it from approving the

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[4] It should be noted that if the Bond Trustee was so authorized, this is an additional reason that the appellants' other arguments are without merit because the appellants would be parties to a Settlement agreed to by their authorized agent.

Settlement, particularly in view of the agreement by the Bond Trustee at the direction of a majority in principal amount of the Bondholders to enter into the Settlement, the Bankruptcy Court's independent finding that the Settlement was fair and reasonable and in the interest of all Bondholders, and the approval of the Joint Plan of Reorganization, which incorporates the Settlement, by a large majority of the Bondholders. *See In re Delta*, 2007 WL 1805567 at *7-*10. The Bankruptcy Court was also correct in finding that any impairment of the Bondholder's ability to collect was due to Delta's default due to bankruptcy and its protection under the bankruptcy laws, not to any act of the Issuer or Bond Trustee.

In reaching this conclusion, the Bankruptcy Court carefully reviewed the Indenture, including all of Article IX relating to "Defaults and Remedies," and found that "[t]hese provisions, individually and collectively, make absolutely clear that, when there is a default by the issuer, the Bond Trustee alone has the power and authority to commence remedial procedures on behalf of all Bondholders, constrained only by the direction of a majority in amount of the Bondholders." *Id.* at *10. Furthermore, the power to negotiate and agree upon settlements inheres within this power to commence remedial procedures. *See, e.g., In re Smart World Tech., LLC*, 423 F.3d 166, 174-75 (2d Cir. 2005); *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 355 (S.D.N.Y. 2007). Moreover, non-impairment clauses of the type upon which the appellants rely become moot in the context of a default because of bankruptcy. *In re Delta*, 2007 WL 1805567 at *10 (collecting cases).

The brief of the amicus curiae ABA further convincingly shows that section 9.06 of the Indenture

borrows language from the Trust Indenture Act of 1939 ("TIA"), 15 U.S.C. §§ 77aaa *et seq.*, which was included in indentures to prevent insiders from renegotiating an issuer's obligations to the detriment of non-insider investors and was never intended to preclude a trustee from procuring a satisfactory compromise, subject to judicial scrutiny and approved by a majority of the bondholders, from a bankrupt issuer. (Br. of Amicus Curiae American Bankers Association 7 (citing Hearing on H.R. 10292 Before the Subcomm. of the Comm. on Interstate and Foreign Commerce, 75th Cong. 3 (1938) (statement of William O. Douglas, SEC Chairman)).) Moreover, the appellants concede that the case law suggests the language of section 9.06 would not prevent a trustee from impairing rights to principal and interest if the issuer were the bankrupt.

While KCAB, rather than Delta, is the issuer of the Bonds here, the Bankruptcy Court correctly found that the bonds are non-recourse with respect to KCAB and that Delta provides the only guaranteed source of payments under the Bonds. The appellants have provided no authority holding that a non-impairment provision like section 9.06 requires unanimous Bondholder consent to enter a settlement in the circumstances present here. Delta's bankruptcy, which compromised the Guaranty and the Lease which are "inextricably related" to the Indenture, also compromised the rights to payment under the Bonds and therefore overrides the protection of section 9.06. In any event, section 10.10 of the Indenture provides that the Bond Trustee may resolve any ambiguities or inconsistencies in the Indenture in good faith, and there is no question that the Bond Trustee's interpretation that section 9.04

takes precedence over section 9.06 in the circumstances present here is a good faith interpretation.

In summary, the Court concurs with the Bankruptcy Court's conclusion that the Indenture authorized the Bond Trustee to conduct remedial proceedings at the behest of a majority of the Bondholders, and that the Bond Trustee's remedial powers included the right to enter the Settlement that was ultimately approved by the Bankruptcy Court.

C.

The appellants' arguments concerning KCAB's alleged liability to the Bondholders for "re-let proceeds" under the Lease and Indenture provide no basis for reversal. First, as the Bankruptcy Court found, the issue of re-let proceeds was both a legal and factual question that confronted the parties to the Settlement and that was resolved by the Settlement, which the Court has already concluded the Bond Trustee was authorized to enter on behalf of the Bondholders and which the Bankruptcy Court had the power to approve. *See In re Delta*, 2007 WL 1805567 at *5. As such, further inquiry into the question whether the Lease and Indenture assigned rights to the re-let proceeds to the Bondholders is wholly unnecessary.

Second, even if the Court were to look behind the Settlement and decide whether the governing documents assigned to the Bondholders any claims based on re-let rights, it would conclude that they do not. Delta's payments under the Lease (and guaranteed in the Guaranty to be paid to the Bond Trustee on behalf of the Bondholders) constituted the only payment stream to which the Bondholders were

entitled. *See In re Delta*, 2007 WL 1805567 at *2, *11. The provision the appellants contend establishes their right to re-let proceeds, section 8.07(c) of the Lease, provides that KCAB owes a duty to use its "best efforts" to re-let any vacated portion of its leased facilities "and to credit all rentals derived from any such reletting to the rentals payable by [Delta] under this Agreement." The Lease is an agreement between KCAB and Delta, and thus the duty expressed in section 8.07(c) is a duty owed by KCAB to Delta. The Lease required KCAB to assign to the Bond Trustee certain rights of KCAB under the Lease as security for the payment of the Bonds, including KCAB's right to receive payments from Delta, but it explicitly did not assign "Unassigned Rights." (Lease § 4.04.) The Indenture specifically included KCAB's duty to re-let under section 8.07 of the Lease as one of the "Unassigned Rights" and hence it was a right not assigned to the Bond Trustee. (*See* Indenture § 1.01 ("Unassigned Rights").) A carve-out to the Unassigned Rights language does appear to provide that money produced through reletting the facilities should be applied toward payment of the Bonds (*see id.*), but to say that KCAB should forward any proceeds it receives from re-letting the facilities to the Bond Trustee for the benefit of the Bondholders is not the same as imposing upon KCAB a duty to the Bondholders to re-let the facilities. The re-let provision provides an obligation on KCAB to mitigate its damages in the face of a default by Delta under the Lease and to apply the proceeds toward payment of the Bonds. But the re-let obligation was never a duty owed to the Bond Trustee or the Bondholders. Hence, the re-let provision of the Lease provides no basis for the Trustee, much less individual Bondholders, to

enforce any right to require KCAB to re-let vacated facilities.

Finally, the evidence before the Bankruptcy Court relating to the availability of alternative tenants for the facilities at issue showed that no tenant other than Delta would want to make the airport a hub and that some efforts had been made to find other potential tenants. (*See* Dep. of Robert F. Holscher 62-63, 73, 198-99, 206-07, Ex. 11 to McClammy Decl.) It is thus unrealistic in the extreme to assert that the Bond Trustee could have sought greater recovery for the Bondholders than they received under the Settlement by attempting to enforce any rights to the re-let provisions.

For all of these reasons, the appellants have failed to show that the Settlement improperly impaired any rights to re-let proceeds.

CONCLUSION

The Court has considered the appellants' remaining arguments and found them to be either moot or without merit. The Settlement Order entered by the Bankruptcy Court is therefore affirmed.

SO ORDERED.

Dated: New York, New York
August 27, 2007

/s/ John G. Koeltl
JOHN G. KOELTL
United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[Filed 8/28/07]

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07 CIVIL 3968 (JGK)

In re DELTA AIR LINES, INC., *et al.*,
Debtors.

KENTON COUNTY BONDHOLDERS COMMITTEE,
Appellants,

-against-

DELTA AIR LINES, INC., *et al.*,
Appellees.

JUDGMENT

Appellants having appealed from a Settlement Order of the United States Bankruptcy Court for the Southern District of New York, and the matter having come before the Honorable John G. Koeltl, United States District Judge, and the Court, on August 27, 2007, having rendered its Opinion and Order affirming the Settlement Order entered by the Bankruptcy Court, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated August 27, 2007, the Settlement Order entered by the Bankruptcy Court is hereby affirmed.

Dated: New York, New York
August 28, 2007

J. MICHAEL McMAHON
Clerk of Court

BY: /s/ [Illegible]
Deputy Clerk

APPENDIX C

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11
Case No. 05 B 17923 (ASH)
(Jointly Administered)

In re: DELTA AIR LINES, INC., *et al.*,
Debtors.

DECISION GRANTING RULE 9019
MOTION AND APPROVING SETTLEMENT

Debtor Delta Air Lines, Inc. ("Delta")[1] and Kenton County Airport Board ("KCAB") are parties to a lease (the "Lease") and various other agreements (collectively with the Lease, the "Facilities Agreements") governing Delta's use and occupancy of certain facilities and improvements at the Cincinnati/Northern Kentucky International Airport (the "Airport") dated February 1, 1992. The Lease calls for rental payments over thirty years equal to amounts due on certain special facilities revenue bonds—the $419 million Kenton County Airport Special Facilities Revenue Bonds, 1992 Series A and the $19 million Kenton County Airport Special Facilities Revenue Bonds, 1992 Series B (together, the "Bonds" and holders thereof the "Bondholders"). The Bonds were issued under a Trust Indenture (the "Indenture")

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[1] Delta and certain of its affiliates filed their petitions under Chapter 11 in September 2005.

dated as of February 1, 1992 between KCAB an issuer and Star Bank, N.A., predecessor-ininterest to UMB Bank, N.A. as trustee (the "Bond Trustee"), pursuant to which KCAB assigned to the Bond Trustee certain of its rights under the Lease including the right to receive the rental payments from Delta.

In late 2005 Delta informed KCAB and the Bond Trustee that Delta intended to reject certain of the Facilities Agreements including the Lease. After more than a year of complex, hard fought, arms' length negotiations, Delta, KCAB and the Bond Trustee reached a global settlement (the "Settlement") resolving all issues between the parties arising from Delta's rejection of the Lease and other Facilities Agreements.

Before the Court is Delta's motion under Bankruptcy Rule 9019, joined in by KCAB and the Bond Trustee and supported by the Official Committee of Unsecured Creditors, seeking entry of an order to implement the Settlement by (1) approving the parties' Settlement Agreement, (2) approving Delta's rejection of the Lease and certain other Facilities Agreements and (3) authorizing Delta and KCAB to enter into a new lease (the "New Lease") and other agreements.

The only objection to the 9019 motion and the Settlement was filed by five holders of Bonds said to aggregate approximately $51 million, four of which acquired their Bonds after January 1, 2006.[2] Self-

[2] The total outstanding Bonds presently aggregate $413,570,000 principal amount held by substantially more than 546 Bondholders. The Bonds are held in street name and thus holders cannot be numbered. But 546 Bondholders holding $168.5 mil-

styled the "Ad Hoc Committee of Kenton County Bondholders," the five objecting Bondholders will be referred to here as the "Objectors" and their objection the "Objection."

The Objectors do not assert that the Settlement is not reasonable or beneficial for Delta and its creditor constituency, nor would one expect such an argument. But what is surprising is that the Objectors did not make any argument that the Settlement is not reasonable or beneficial from the perspective of the Bondholders, even after the Court noted the point at the oral argument (Tr. 106-107). Instead, the Objectors oppose the Settlement on eight strictly legal grounds, summarized as follows:

> (i) The Bond Trustee lacks authority to bind the Objectors to a settlement for less than 100% of their entitlement to principal and interest on the Bonds without their consent.
>
> (ii) The Court lacks subject matter jurisdiction to modify the Indenture, which is an agreement between two non-debtor parties, KCAB and the Bond Trustee.
>
> (iii) The global settlement violates Kentucky law which requires full payment of principal and interest on all Kentucky bonds.
>
> (iv) The settlement purports to allow Delta to "rip up its original 30-year Lease Agreement dated February 1, 1992" and sign a new facilities agreement allowing Delta to continue to use the facilities "rent free" for the remaining 15-year term of the original Facilities Agreements.

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lion face amount of Bonds have recently voted timely and properly on the Plan.

(v) The settlement is an illegal *sub rosa* plan.

(vi) The settlement is dependent upon an unlawful release of claims of Bondholders against the three settling parties.

(vii) Modification of the Indenture violates the impairment of contract clause of the United States Constitution.

(viii) The Federal Trust Indenture Act prohibits any impairment of the Bondholders' rights under the Indenture.

Each of these arguments is considered below.

Jurisdiction

As amplified below, this Court has jurisdiction over this case and this contested matter under 28 U.S.C. §§ 1334(a) and (b) and 157(a) and the standing order of referral to bankruptcy judges signed by Acting Chief Judge Robert J. Ward on July 10, 1984. The pending motion is a core proceeding under 28 U.S.C. § 157(b)(2).

Basic Facts Ignored by Objectors

There is an aura of unreality that pervades the Objectors' arguments and stems from their failure to take cognizance of two real world, fundamental facts of life in this Chapter 11 case which cannot be ignored.

First, it is an oft-repeated premise of the Objectors' position on this motion that they cannot be deprived of their contractual right to 100% of their entitlement to principal interest under the Indenture without their consent, and they do not consent. What is ignored is the fact that this is a bankruptcy case, and whether the Settlement is approved by this Court or

not, the Bondholders including Objectors are not going to receive 100% of the amount to which they are entitled under the Indenture. Bondholders and the Bond Trustee have no claim against KCAB, the issuer of the Bonds, which are expressly made non-recourse under the Indenture. The sole source of funding for the Bonds is the stream of rental payments under the Lease running from 1992 through 2022. As a Chapter 11 debtor, Delta has the extraordinary power under Section 365(a) of the Bankruptcy Code to reject the Lease, leaving KCAB, and thus the Bond Trustee, and thus the Bondholders, with an unsecured, pre-petition claim for damages under Section 365(g), which (Delta argues but the Court need not decide) may be capped under Section 502(b)(6). Whether capped or not under Section 502(b)(6), it is a practical certainty that the Bondholders will receive less than their contractual entitlement under the Indenture. The only question is how much less, and that was precisely the subject of the negotiations leading to the Settlement.

A second premise underlying the Objection is that the Court lacks subject matter jurisdiction to modify the Indenture because it is a contract between two non-debtors. The legal defects in this argument are addressed below. The practical reality which the argument ignores is that the Bond Trustee's rights against KCAB under the Indenture to receive the rent paid by Delta to KCAB will inevitably be modified, whether or not this Court approves the Settlement. When Delta rejects the Lease, the rent payments will terminate, leaving the Bond Trustee with an unsecured pre-petition claim to be paid in Delta stock *pari passu* with all other unsecured creditors.

In short, the putative entitlement which the Objection seeks to vindicate—preservation of the Indenture and the Bondholders' right to 100% payment thereunder—is sheer fantasy in the context of this case under the Bankruptcy Code. Even if this Court does not approve the Settlement, Delta will reject the Lease and thereby terminate all future payments under the Lease, leaving KCAB and the Bond Trustee with an unsecured pre-petition claim. The settling parties' negotiations concerned the amount and composition of that claim, with the Bond Trustee and KCAB asserting every argument against Delta which the Bondholders themselves could have asserted if the Bondholders had standing to make claim against Delta, which they do not, as amplified below. If Delta's position on the key issues in the negotiations (especially the Section 502(b)(6) issue) were litigated and sustained by a court, the unsecured pre-petition claim would result in recovery by the Bondholders of only a fraction of their entitlement *under the Settlement*. But in no event would the Indenture and the Bondholders' rights thereunder survive unmodified.

The Negotiations and Settlement

After Delta notified the parties in late 2005 of its intent to reject the Lease and certain of the Facilities Agreements, Delta, KCAB and the Bond Trustee agreed to a stipulation on December 30, 2005 providing for a 60-day period for the parties to attempt to reach a consensual agreement, with the further agreement that any motion prior to expiration of the negotiation period to approve rejection would result in rejection effective January 19, 2006 if and when approved by the Court. On February 17, 2006 the parties agreed to extend the negotiation period from

March 1 to May 1, 2006. On April 28, 2006, having been unable to negotiate an agreement, Delta filed a motion (the "Rejection Motion") seeking rejection of the Lease and certain of the Facilities Agreements. The parties continued to negotiate, however, and on July 17, 2006 Delta, KCAB and the Bond Trustee entered into a forbearance agreement (the "Forbearance Agreement") providing for Delta to make an initial payment to the Bond Trustee on behalf of the Bondholders on August 1, 2006 of $9 million for use and occupancy of the airport facilities for the period from January 1 to August 31, 2006, and monthly payments equal to $1,125,000 for use of the facilities thereafter. The Forbearance Agreement provided that payments pursuant thereto would be credited against any obligation Delta may have to pay for the facilities under the Lease or otherwise, and each of the parties would forbear from exercising any rights or remedies available to them for Delta's failure to make whatever payments were contractually due under the Lease. On November 26, 2006 and again on December 29, 2006 the Forbearance Agreement was extended, ultimately to February 15, 2007. Under the Settlement Agreement, the forbearance period was extended until the "Issuance Date" as defined therein.

The negotiations between the settling parties were carried on from December 2005 until mid-February 2007. As described by the Bond Trustee in its Reply Memorandum (page 4) "the parties were engaged in long and contentious negotiations and legal battles over their respective rights, obligations and claims." The Bond Trustee was represented by "a team of professionals to provide guidance and advice concerning the myriad of legal, regulatory and economic issues faced during this chapter 11 case." *Id.* The

team included experienced bankruptcy counsel, experienced FAA counsel, experienced Kentucky law counsel and an experienced airline industry consultant.

The Bond Trustee "developed an exceptionally full and open process of communication with all of the 1992 Bondholders" and "took all reasonable efforts to insure that the 1992 Bondholders were timely informed of the status of the various matters involved in these bankruptcy proceedings." *Id.* at 5. This "process of communication" included sixteen Bondholder notices during the course of the bankruptcy case to report on material events including, *inter alia*, Delta's threats to reject the Lease and ongoing negotiations concerning the potential settlement of the issues. The Bond Trustee also established a website "solely dedicated to the interests of the 1992 Bondholders," which reported on all material events and pleadings "and finally all of the documents associated with the Settlement—which were posted over a month before the objection deadline concerning the Settlement and weeks before the voting deadline on Delta's plan of reorganization." *Id.* at 5. The Bondholder notices were also provided to Depository Trust Company for distribution to beneficial holders and posted on Bloomberg.

An unofficial "Bondholders' Committee" was formed constituted of Bondholders holding approximately 60% of the outstanding principal amount of the Bonds. "Through this Bondholder Committee, the Indenture Trustee was able to review critical issues with a majority of the ultimate stakeholders and to access their viewpoints and judgments as to the strategic and business issues. Pursuant to the Bondholder Notices, all 1992 Bondholders were invited to join the

Bondholders' Committee to assist in the process." *Id.* at 6, footnotes omitted.

The Settlement materials were posted on the Bondholders' website, and full information concerning the Settlement was also (i) sent directly to the Bondholders through Delta's balancing agent, (ii) published on Delta's website, (iii) published in the *Wall Street Journal* National Edition and the *Cincinnati Inquirer*, (iv) provided to four Nationally-Recognized Municipal Securities Information Repositories and (v) set forth in an 8K filed by Delta on March 8, 2007 with the Securities and Exchange Commission. The Bond Trustee disclosed the terms of the Settlement in open court on February 22, 2007 and followed up with a Bondholder Notice posted on the Bondholder website, published on Bloomberg on February 23, 2007 and sent to DTC for distribution the same day.

Among the legal issues which were hotly contested in the Settlement negotiations and resolved by the Settlement Agreement were the following:

- Delta's ability to reject the Facilities Agreement;
- Whether the obligations under the Guaranty are capped under Section 502(b)(6) of the Bankruptcy Code;
- Whether the Facilities Agreement itself is a disguised financing transaction;
- Whether the Indenture Trustee had a claim to "re-let proceeds" to the extent that the Facilities Agreement was rejected;
- Whether Kentucky law was an obstacle to Delta's plans to reject the Facilities Agreement or otherwise occupy the Facilities at a reduced

rental rate even if the Rejection Motion was approved;

- The viability of the Indenture Trustee's claims against KCAB.

Id. at 33.

The "re-let proceeds" question was not only a legal but a factual issue of significance to the economic negotiations. It appears that the rent paid by Delta to KCAB under the Lease was substantially higher than the market values for the facilities. Moreover, counsel for the Bond Trustee revealed at the hearing on the 9019 motion that the Trustee's marketing professionals had determined after lengthy study that it would be difficult if not impossible to find replacement tenants for the facilities occupied by Delta under the Lease at the Airport.

The Bondholders' Committee, comprising holders of 60% of the face amount of the Bonds, which was kept fully informed of the negotiations, gave written instructions authorizing the Bond Trustee to agree to the terms of the Settlement. The Settlement Agreement and its constituent elements resolved all outstanding issues between the parties. The Settlement Agreement is well summarized in Delta's Rule 9019 motion as follows:

> 10. The Settlement Agreement sets forth the Parties' agreement that, *inter alia*,
>
> (i) the Rejected Agreements shall be deemed rejected as of the dates set forth in Exhibit A to the Settlement Agreement;
>
> (ii) the Rejected Agreements shall be terminated by agreement of the Parties as of the Closing Date, and the 1992 Bond Indenture

shall be [sic] remain in effect solely as set forth in the Settlement Agreement and shall other wise be of no force or effect;

(iii) Delta and KCAB will enter into a new lease agreement substantially in the form of the draft attached as Exhibit F to the Settlement Agreement (the "New Lease") and such other agreements as Delta and KCAB shall deem necessary or appropriate in connection therewith, including a Maintenance and Operations Services Agreement in form and substance similar to the form attached as Exhibit G to the Settlement Agreement (the "New M&O Agreement") and a Bulk Storage Facilities Lease in form and substance similar to the form attached as Exhibit B to the Settlement Agreement;

(iv) Delta shall issue a note (the "Delta Note")[7] to the Bond Trustee, on behalf of the 1992 Bondholders, the original principal amount of which shall be $85,000,000 less amounts paid by Delta under the Forbearance Agreement, as amended, and less amounts made as a prepayment of all or a portion of the Delta Note Value, and bearing a fixed interest rate of eight (8) percent per annum, as provided for in the Settlement Agreement;

(v) the Bond Trustee, as trustee and on behalf of all 1992 Bondholders, shall have a $260,000,000 allowed pre-petition, non-priority, unsecured claim against Delta (the "Bankruptcy Claim");

(vi) Delta, KCAB, the Bond Trustee, and the 1992 Bondholders will forever release, dis-

charge, waive and abandon any claims or rights that each may have against the others with respect to the 1992 Bonds, 1992 Bond Facilities and the 1992 Bond Agreements as set forth in the Settlement Agreement;

(vii) Delta shall reimburse the Bond Trustee for the actual and reasonable fees and expenses of the Bond Trustee incurred in connection with the 1992 Bonds, the Settlement Agreement and Delta's bankruptcy case, with such reimbursement, in the aggregate, not to exceed $2,000,000;

(viii) Delta will be deemed to have assumed at Closing the Airport Use Agreement, as amended, including prepetition and postpetition obligations pursuant thereto; and

(ix) the Guaranty and Tax Certificate are prepetition obligations of Delta that, as such, shall be fully discharged and terminated in connection with Delta's exit from bankruptcy, according to the terms set forth in the Settlement Agreement.

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[7] The Delta Note shall be and shall be deemed issued under Delta's Plan and, pursuant to 11 U.S.C. § 1145, shall qualify for exemption from any Federal or State law requiring registration for offer or sale of a security.

The Delta Note and the payments of amounts under Section 3.02(c)(iii) of the Settlement Agreement are provided in consideration of (i) the consent to certain relief sought in the Rejection Motion as modified by the terms of this Agreement, and (ii) the release of all claims with respect to the post-rejection occupancy of the 1992 Bond Facilities, including any purported rights to receive relet proceeds.

The Settlement appears to this Court to be clearly in the best interests of *both* Delta and the Bondholders. Under the existing Lease, Delta currently is required to pay $29.1 million in rent each year in interest only on the Bonds. Principal payments on the Bonds would be due in 2012, 2020, 2021 and 2022 in the amounts of $50 million, $135,210,000, $130 million and $98,360,000, respectively, aggregating $413,570,000. In lieu of these liabilities for rent under the Lease payable between now and 2022, the Settlement Agreement provides for Delta's note in the amount of $85 million less amounts previously paid under the Forbearance Agreement, and a pre-petition, non-priority, unsecured claim of $260 million payable in Delta equity securities. In addition to these very substantial savings, the Settlement Agreement will avoid prolonged and costly litigation.

The terms of the Settlement Agreement also appear to be favorable for the Bondholders. Delta's Rejection Motion, resolved by the Settlement Agreement, would be virtually assured of approval if the Court were to sustain the Objection and disapprove the Settlement Agreement. The right to reject executory leases and other contracts under Section 365(a) is one of the powerful tools given to debtors-in-possession to facilitate reorganization under the Bankruptcy Code. Rejection is routinely granted where, as here, it is in the debtor's interest under the business judgment rule, and there has been no suggestion by Objectors that any ground would exist for the Court to deny Delta's motion to reject. In the event of rejection, the Bondholders would receive an unsecured, pre-petition claim which could not approach their entitlement under the Indenture. It bears repeating that the Objectors have not argued that the Settlement is not beneficial to the Bond-

holders. As summarized by Delta in its Reply Memorandum (page 4), unrebutted by the Objectors at oral argument:

> [W]ithout the Settlement Agreement, the 1992 Bondholders faced receiving, as their *total* recovery, a single claim capped by section 502(b)(6) of the Bankruptcy Code in the amount of either (approximately) $75.5 million or $127.5 million. Under the Settlement Agreement, however, they will receive a claim of $260 million, cash or notes with a present value of $85 million (the "Delta Note") and $2 million in legal fees. Assuming a 65 cent recovery for general unsecured creditors,[5] the 1992 Bondholders will receive consideration equivalent to an unsecured claim of approximately $394 million—3 to 5 times what they might well have recovered absent the Settlement Agreement. The 10% Bondholders' erroneous suggestion that Delta's new lease is "rent free" also ignores the hundreds of millions of dollars of value that Delta is paying to the 1992 Bondholders in additional consideration under the Settlement Agreement. As discussed below (and as was made clear in discovery), the majority of the 1992 Bondholders and the Bond Trustee chose to receive these payments up front and in the form of freely tradable securities, rather than having them structured as future rent and spread out over the course of the lease term.

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[5] The estimated recovery range for holders of general unsecured claims against Delta included in Delta's Disclosure Statement was 62% to 78% with a mid-point of 70%. Recent claim trading activity also suggests a market estimate of a 60 cents recovery.

Delta's Plan and Bondholder Approval

The Settlement Agreement expressly provides that the terms of the Settlement (which was fully and timely disclosed to all creditors including Bondholders) are incorporated in and made part of Delta's Plan of Reorganization and subject to creditor approval of the Plan. The Bondholders have voted overwhelmingly both in dollar amount (97.35%) and number (89.19%) to accept the Plan. The certification of ballots shows that 546 Bondholders holding $168,520,535 of Bonds filed timely and proper claims. Of these, 487 Bondholders holding $164,052,671 of Bonds voted to accept the Plan, with only 59 Bondholders holding $4,467,864 of Bonds voting to reject the Plan. A number of untimely or improper votes were also cast, some or all of which voted to reject the Plan. But even counting these improper votes, 89.49% in amount and 88.69% in number voted in favor of the Plan.

Bondholders voting on the Plan obviously have no interest under the Plan other than what is provided under the Settlement. Thus, the actual vote reflects the Bondholders' overwhelming support for the Settlement.

The Objectors' Legal Arguments

I. The Bond Trustee's authority to bind the Objectors to the Settlement

The Objectors rely on Sections 9.06, 12.03(a), 12.06 and 12.07 of the Indenture to argue that "the Bond Trustee lacks authority to enter into the Settlement Agreement." These so-called "non-impairment provisions" do indeed purport to preclude any impairment of Bondholders' rights under the Indenture. Thus, for example, Section 9.06 states:

> SECTION 9.06. No Impairment of Right to Enforce Payment. Notwithstanding any other provision of this Indenture, the right of any Owner to receive payment of the principal of or purchase price of an interest and any premium on his bond, on or after the respective due dates expressed therein, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Owner.

Article XII is titled "MODIFICATION OF THIS INDENTURE AND THE AGREEMENT." Section 12.03 is titled "Supplemental Indenture with Consent of Owners;" Section 12.06 is titled "Amendment of Agreement or Guaranty without Consent of Owners;" Section 12.07 is titled "Amendment of Agreement or Guaranty with Consent of Owners."

Viewed in the abstract, and without reference to the facts and circumstances under which they may be applicable, these provisions appear to support the Objectors' argument. But what the argument ignores is that the sole source of payment of the Bonds is a Lease between the issuer, KCAB, and a debtor-in-possession in bankruptcy. The Bankruptcy Code, which overrides private agreements, grants Delta the right to reject the Lease and terminate future payments under the Lease to KCAB, which will terminate payments under the Indenture to the Bondholders. In short, the Bondholders' rights under the Indenture *will be impaired* in this bankruptcy case despite all the provisions of the Indenture relied upon by the Objectors.

Article XII is not concerned with default or bankruptcy or other events beyond the control of KCAB or the Bond Trustee—it relates to consensual modifi-

cations of the Indenture and the Agreement. We are not concerned here with a "supplemental indenture" (Section 12.03) or amendments of the agreement or guaranty with or without consent of the owners (Sections 12.06, 12.07), and those provisions are simply irrelevant here. The impairment which the Objectors complain of results not from any agreement of the Bond Trustee, but from operation of the Bankruptcy Code and the simple economic fact that this insolvent debtor *cannot* pay its creditors unimpaired.

Article IX of the Indenture titled "DEFAULTS AND REMEDIES," is relevant, and it is here that we find apparent ambiguity. But the ambiguity is more apparent than real. Section 9.06, relied upon by Objectors, is titled "No Impairment of **Right** to Enforce Payment." I have emphasized the word "Right" because the legal "right" to payment, or to try to enforce payment, must be distinguished from the quite separate factual question of whether the issuer will have the *capacity* to pay. Once Delta filed for bankruptcy, defaulted in its payment obligations under the Lease and declared its certain intention to reject the Lease, the Bondholders' "right" to 100% payment under the Indenture became academic. The non-impairment provisions including Section 9.06 are meaningless in bankruptcy because, unless the debtor is solvent and able to pay all creditors 100 cents, all creditors are impaired whether they consent or not. It bears repeating that the impairment of which the Objectors complain was not the consequence of any consensual relinquishment of Bondholder rights by the Bond Trustee. All the Bond Trustee did was to negotiate the amount and timing of the impairment which the Bondholders would suffer after the fact of impairment was a *fait accompli* by reason of Delta's bankruptcy, default and decision to reject the Lease.

The real issue under Article IX of the Indenture was not whether the Bondholders would be impaired —they *were* impaired—but what remedies could be exercised by or on behalf of the Bondholders, by whom and under what authority.

The Indenture clearly vests in the Bond Trustee alone the power to exercise the Bondholders' remedies in the event of a default, subject to instruction by a majority in principal amount of Bondholders. Section 9.01 provides:

> Upon the occurrence and continuance of any Event of Default . . . the Trustee may, and at the written request of Owners of a majority in principal amount of Bonds then Outstanding shall, by written notice to the Issuer and the Company, declare the Bonds to be immediately due and payable. . . .

Section 9.02 provides as follows:

> SECTION 9.02. Remedies. In addition to the rights conferred, or obligations imposed, upon the Trustee under Section 9.01 to accelerate the principal of the Bonds, upon the occurrence and continuance of any Event of Default, then and in every such case the Trustee in its discretion may, and upon written request of the Owners of a majority in principal amount of the Bonds then Outstanding and receipt of indemnity to its satisfaction shall, in its own name and as the Trustee of an express trust:
>
> (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners of the Bonds, and require the Issuer and the Company to carry out any agreements with or for the benefit of the

Owners and to perform their duties under the Act, the Agreement and this Indenture;

(b) take all such actions as may be permitted under the Letter of Credit or other Credit Facility;

(c) bring suit upon the Agreement, the Bonds or any Credit Facility; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds.

Section 9.04 grants a majority in amount of Bondholders power to direct the Trustee's remedial proceedings. Section 9.04 provides, in relevant part:

SECTION 9.04. Owners' Right to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in principal amount of the Bonds then outstanding hereunder shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture; provided, however [not relevant].

Section 9.05 titled "Limitation on Owner's Right to Institute Proceedings" expressly limits the right of any Bondholder to institute any suit, action or proceeding to enforce the Bonds unless and until the owner of a majority in amount of the Bondholders shall have made written request of the Trustee to do so and the Trustee shall not have complied. This Section concludes with the language "it being understood and intended that no one or more of the Owners shall

have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided. . . ."

Section 9.07 provides that the Trustee may exercise its rights of enforcement under the Indenture without the possession of any of the Bonds and concludes:

> Any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Owners subject to the provisions of this Indenture.

These provisions, individually and collectively, make absolutely clear that, when there is a default by the issuer, the Bond Trustee alone has the power and authority to commence remedial procedures on behalf of all Bondholders, constrained only by the direction in writing of a majority in amount of the Bondholders. No individual Bondholder and no group of Bondholders, large or small, has the right or power on its own behalf or on behalf of other Bondholders to exercise remedial procedures unless the Bond Trustee refuses to act.

Implicit in the authority to commence proceedings to remedy defaults is the power to negotiate and agree upon settlements, subject to the power to direct in writing by a majority in amount of the Bondholders. This basic postulate has been recognized by the courts. *See In re Smart World Tech., LLC*, 423 F.3d 166, 174-75 (2d Cir. 2005) (power to sue conferred by Bankruptcy Code "presumably includes the derivative power to settle suits"); *Kelton Corp v. County of Worcester*, 688 N.E.2d 941, 944 (Mass. 1997) (the power of a municipal government to com-

promise disputed claims is necessarily incident to the power to sue); *Evans v. Tucker*, 135 So. 305, 309 (Fla. 1931) (citing "general rule" that the right to compromise is an incident to the power to sue and collect); *Codman v. Dumaine*, 144 N.E. 408, 411 (Mass. 1924) (the power to sue and be sued carried with it as a necessary incident the power to compromise); *Farnham v. City of Lincoln,* 106 N.W. 666, 667 (Neb. 1906) ("The power to compromise grows out of, and is incident to, the power to sue and be sued.").

In default situations where contractual rights are already impaired by exogenous events, non-impairment clauses are moot and the Trustee's power to sue and settle subject to direction by a majority in amount or a specified minimum percentage will be sustained over the objection of a minority or individual. *See MBank Dallas v. LaBarge, Inc.*, Case No. 86 C 9583 (N.D. Ill. 1986) and *Kemper Investors Life Ins. Co. v. Las Colinas Corp.*, Case No. 88 C 9152 (N.D. Ill. 1989). *See also Beal Savings Bank v. Sommer*, 2007 WL 844857, 2007 N.Y. LEXIS 267, at * 13-*26 (N.Y. March 22, 2007); *First National Bank of Louisville v. Continental Illinois National Bank & Trust. Co.*, 933 F.2d 466, 470 (7th Cir. 1991); *Friedman v. Chesapeake & Ohio Ry. Co.*, 261 F. Supp. 728 (S.D.N.Y. 1966), *aff'd* 395 F.2d 663 (2d Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969); *Home Mortgage Co. v. Ramsey*, 49 F.2d 738 (4th Cir. 1931); *Quirke v. St. Louis-San Francisco R.R. Co.*, 277 F.2d 705 (8th Cir. 1960); Restatement (Second) of Trusts § 192 (1959); *Palmer v. Bankers' Trust Co.*, 12 F.2d 747, 754 (8th Cir. 1926).

II. The Court's subject matter jurisdiction

Little need be said of the Objectors' argument that this Court lacks subject matter jurisdiction to modify

the Indenture because it is an agreement between two non-debtors.

Jurisdiction is granted in Title 28 of the United States Code. Section 1334(a) provides that "the district courts shall have original and exclusive jurisdiction of all cases under title 11." Section 1334(b) provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." The Bankruptcy Court has jurisdiction by referral from the District Court under 28 U.S.C. § 157(a) and (b).

It is frivolous to argue that this Court does not have jurisdiction to grant or withhold approval of the Settlement, including that aspect of the Settlement providing for modification of the contractual relationship between KCAB and the Bond Trustee under the Indenture. Both KCAB and the Bond Trustee are direct creditors of Delta, KCAB based on the Lease and the Bond Trustee based on Delta's February 1, 1992 Guaranty of the Lease, which is the only source of funding of KCAB's obligation to the Bond Trustee under the Indenture. All three of these agreements—the Lease, the Indenture and the Guaranty—are inextricably related to each other. KCAB's Section 365(g) claim against Delta for rejection of the Lease and the Bond Trustee's claim against Delta under the Guaranty cannot be resolved without a corresponding resolution of the KCAB-Bond Trustee relationship under the Indenture. The Settlement resolves all claims between the three parties arising from Delta's rejection of the Lease under Section 365(a) of the Bankruptcy Code.

In short, there can be no question that this Court has jurisdiction with regard to the Settlement in its

entirety under both the "arising under title 11" and the "arising in or related to cases under title 11" clauses of 28 U.S.C. § 1334(b).

III. Kentucky law, the Trust Indenture Act and the Constitution

Equally without support are the Objectors' arguments that Kentucky Revised Statute § 103.260(2), Section 316(b) of the Federal Trust Indenture Act of 1939, 15 U.S.C. § 77ppp(b), or the non-impairment clause of United States Constitution, Article I, Section 10, preclude Court approval of the Settlement.

KRS § 103.260 applies to the initial structuring of revenue bond transactions. It does not purport and has never been construed by any court to preclude restructuring of revenue bond debt in the context of default and bankruptcy proceedings, where it is impossible for the debtor to perform in accordance with the bond indenture.

The same may be said for Section 316(b) of the Trust Indenture Act. Section 316(b) was passed out of a "concern about the motivation of insiders and quasi-insiders to destroy a bond issue through insider control. . . ." *UPIC & Co. v. Kinder-Care Learning Ctrs, Inc.*, 793 F. Supp. 448, 452 (S.D.N.Y. 1992). As the Objectors note in their Supplemental Objection, "The court in *UPIC* further noted that in enacting Section 316(b), the SEC was 'undoubtedly aware that requiring unanimity in bondholder voting—rather than mere majority action—would frustrate consensual workouts and help induce bankruptcy . . . [and] welcomed the prospect.' *Id.* at 453." It is self-evident that Section 316(b) could not have been intended to impair the capacity of a debtor and its creditors to restructure debt in the context of bankruptcy. The cases have uniformly recognized that reorganization

proceedings in Chapter 11 are not within the purview of TIA Section 316(b). *See, e.g., In re Bd. of Dirs. of Telecom Argentina, S.A.*, Case No. 06 CIV 2352, 2006 WL 3378687 at *6 (S.D.N.Y. Nov. 20, 2006) (stating that "the TIA cannot prevent the reorganization of a debtor under U.S. bankruptcy laws.") (citations omitted); *UPIC & Co. v. Kinder-Care Learning Ctrs.*, 793 F. Supp. 448, 452-453 (S.D.N.Y. 1992) (noting the SEC's intent to bring contractual recapitalizations under Bankruptcy Court jurisdiction); *In re Bd. of Dirs. of Multicanal S.A.*, 307 B.R. 384, 388-90 (Bankr. S.D.N.Y. 2004) (holding that the plaintiff "conceded, as it must, that the rights of holders to principal and interest on bonds issued under a TIA-qualified indenture can be impaired by bankruptcy proceedings."); S. Rep. No. 248, 76th Cong., 1st Sess. 26 (1939) (stating that the "[e]vasion of judicial scrutiny of the fairness of debt-readjustment plans is [intended to be] prevented by [Section 316(b)'s] prohibition."); H.R. Rep. 1016, 76th Cong., 1st Sess. 56 (1939) (same).

Article I, Section 10 of the United States Constitution provides in pertinent part: "no state shall . . . pass any . . . law impairing the obligation of contracts." This provision does not override Article I, Section 8, Clause 4 providing that "the Congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States," and it obviously has nothing whatever to do with consensual agreements of private parties resolving disputes arising under provisions of the Bankruptcy Code.

IV. Delta's power to reject the Lease

The Objectors' rhetoric in asserting that the Settlement purports to allow debtor to "rip up its original

30-year Lease Agreement" and continue to use the Facilities "rent free" neither illuminates nor supports their Objection. Section 365 does indeed grant Delta the power to reject the Lease, leaving KCAB, and therefore the Bond Trustee and Bondholders, with a pre-petition, unsecured claim. But the Settlement Agreement does not permit Delta to continue to use the Facilities "rent free." The Settlement Agreement recognizes the statutory claim for breach provided under Section 365(g) by granting KCAB, and thereby the Bond Trustee and Bondholders, an $85 million note net of payments under the Forbearance Agreement and a $260 million claim in Delta's bankruptcy in the form of Delta stock. The Settlement reflects the preference of the great majority of Bondholders for payment of the Section 365(g) claim in a form which can be monetized immediately, in lieu of "rent" payments stretched out over fifteen years.

V. The Settlement and the Plan approval process

The Objectors' arguments that the Settlement constitutes a *sub rosa* plan and evades the protections afforded under the plan approval process under the Bankruptcy Code must be rejected for two fundamental reasons.

First, the Settlement is not a *sub rosa* plan. It is a settlement of a bankruptcy claim arising under Section 365(g). Claims both large and small are routinely negotiated, settled and approved under Bankruptcy Rule 9019 in bankruptcy cases without invoking the classification and voting procedures applicable in the plan approval process.

Second, as a practical matter the Settlement has been subjected to the Bankruptcy Code procedures for plan approval in every respect except the creation

of a separate class of Bondholders, by reason of the provision in the Settlement Agreement making the Settlement expressly conditioned on confirmation of Delta's Plan of Reorganization. As noted above, the provisions of the Settlement were widely disclosed to all creditor constituencies including all Bondholders long in advance of the deadline to submit ballots, and the Bondholders voted overwhelmingly to accept the Plan both in number and amount.

VI. The release issue

The release provision, Section 3.02(f) of the Settlement Agreement, is binding upon only Delta, KCAB, the Bond Trustee and the Bondholders. The release is extremely narrow in scope, does not release claims against third parties, and releases only those claims amongst the Releasing Parties, as defined, which are necessary to prevent further litigation with respect to the claims covered and resolved by the Settlement Agreement. The release does not implicate any of the concerns expressed by the Second Circuit in *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136 (2d Cir. 2005).

All the parties to the release, including Delta and the Bondholders, have received substantial consideration from each other, and the only claims being released by any party are from those necessary to effect the Settlement and preclude further litigation with respect to issues resolved and foreclosed by the Settlement.

Conclusion

The Bond Trustee had the exclusive right under the Indenture to act on behalf of all Bondholders to conduct appropriate proceedings in response to an event of default under the Indenture, subject only to

direction by a majority in amount of the Bondholders. Implicit in the power to conduct proceedings to remedy a default is the essential power to negotiate a settlement, again subject to direction by a majority in amount of the bondholders. In agreeing to the Settlement, the Bond Trustee acted in accordance with the written direction of a majority in amount of the Bondholders. The Settlement, which by its terms was incorporated in and subject to approval of Delta's Plan of Reorganization, has been approved by an overwhelming majority of the Bondholders, both in amount and number, who have voted to accept Delta's Plan. The Settlement is fair and reasonable both for Delta and for the Bondholders.

Upon all of the foregoing, the Objection is overruled, Delta's motion under Bankruptcy Rule 9019 is granted and the Settlement is approved.

Dated: White Plains, NY
April 25, 2007

/s/ Adlai S. Hardin, Jr.
U.S.B.J.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11 Case No. :
05-17923 (ASH)
(Jointly Administered)

IN RE: DELTA AIR LINES, INC., *et. al.*,

Debtors.

ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING SETTLEMENT AGREEMENT PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019, (II) APPROVING THE REJECTION OF CERTAIN AGREEMENTS UNDER SECTION 365 AND (III) AUTHORIZING THE ENTRY INTO CERTAIN NEW AGREEMENTS UNDER SECTION 363

Upon the motion dated March 8, 2007 (the "Motion")[3] of Delta Air Lines, Inc. ("Delta") and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "Debtors"),[4] for entry of an order approving the

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[3] Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Settlement Agreement.

[4] The Debtors are the following entities: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.;

Settlement Agreement among Delta, the Kenton County Airport Board ("KCAB") and UMB Bank, N.A., as trustee, (the "Bond Trustee") with respect to Delta's occupancy of certain facilities at the Cincinnati/Northern Kentucky International Airport (the "Airport") pursuant to Federal Rule of Bankruptcy Procedure 9019 and sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), and authorizing (i) the rejection of certain agreements, as outlined more fully below, pursuant to section 365 of the Bankruptcy Code, 11 U.S.C. § 365; and (ii) the entry by Delta into certain new agreements as contemplated by settlement agreement, pursuant to section 363 of the Bankruptcy Code, 11 U.S.C. § 363, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and the Settlement Agreement and the terms and conditions thereof being incorporated into the Plan; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and the Court having considered the submissions of Delta, KCAB, the Bond Trustee, and the Official Committee of Unsecured Creditors in support of the Motion; and the Court having considered the preliminary and supplemental objections of the Ad Hoc Committee of Kenton County Bondholders (the "Ad Hoc Bondolders"); and a hearing on the Motion

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Delta Loyalty Management Services, LLC; Delta Technology, LLC; Delta Ventures III, LLC; Epsilon Trading, Inc.; Kappa Capital Management, Inc.; and Song, LLC.

having been held; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors and otherwise supported by the Bankruptcy Code; the Court hereby ORDERS, ADJUDGES and DECREES as follows:

1. The Motion is granted in its entirety. The execution and delivery of the Settlement Agreement by the Parties and the settlement, compromises, and releases set forth in the Settlement Agreement are hereby approved.

2. The Objections of the Ad Hoc Bondholders are overruled.

3. The terms of the Settlement Agreement, attached as Exhibit A to the Motion (the "Settlement Agreement"), are incorporated into the Plan and herein by reference. To the extent there is any conflict between the terms of the Settlement Agreement and this Settlement Order, the terms of this Settlement Order shall govern.

4. The manner in which notice of the Motion and Settlement Order was provided to all parties entitled to notice, including the 1992 Bondholders, is adequate, appropriate, reasonable, and sufficient for all purposes and is hereby approved.

5. Debtors' Motion for Entry of an Order Approving the Rejection of Certain Executory Contracts and Unexpired Leases and Authorizing the Abandonment of Certain Personal Property (Docket No. 2477) (the "Rejection Motion"), and the relief sought therein, in every respect as modified, qualified or amended by the terms of the Settlement Agreement, is granted pursuant to section 365 of the Bankruptcy Code, and, as of the Closing Date the Rejected Agreements in

each case as defined in the Settlement Agreement, are deemed rejected as of the Rejection Dates.

6. The Rejected Agreements are hereby deemed terminated and cancelled as of the Closing Date, with the exception of the 1992 Bond Indenture, the terms of which shall remain in effect solely as and for the purposes set forth in the Settlement Agreement.

7. On the Closing Date, Delta and KCAB shall enter into the New Lease and the other Implementing Agreements to which they are to be a party.

8. Delta is authorized and directed to enter into the New Lease, and each of the other Implementing Agreements to which it is a party and/or to make such payments as are contemplated by the Settlement Agreement, in accordance with section 363 of the Bankruptcy Code.

9. Delta is authorized to issue the Delta Note under the Plan. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable nonbankruptcy law, the issuance of the Delta Note will be exempt from registration under the Securities Act. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of the Delta Notes shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, FAA filing or recording fee or other similar tax or governmental assessment in the United States.

10. Prior to the Issuance Date, Delta is authorized to continue to make monthly payments in accordance with Section 3.02 of the Settlement Agreement.

11. The Settlement Agreement is fair and reasonable to, and is in the best interest of, Delta and its creditors, KCAB, the Bond Trustee, and the 1992 Bondholders, and, in entering into the Settlement Agreement, Delta, KCAB, the Bond Trustee, and those 1992 Bondholders irrevocably directing the Bond Trustee to enter into the Settlement Agreement have exercised their rights and powers, and used the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances.

12. The mutual releases contained in the Settlement Agreement shall be effective as of the Closing.

13. Upon the Closing, each of the Releasing Parties shall be deemed to have released and shall be permanently enjoined from asserting, pursuing or prosecuting, in any manner and in any forum, any and all Released Claims against any of the Releasing Parties, including, but not limited to, claims arising from the negotiation and entry into the Settlement Agreement and/or the Implementing Agreements.

14. The Guaranty and Tax Certificate are pre-petition obligations of Delta that, as such, upon the Closing and as part of the Settlement Agreement shall be fully discharged and terminated in connection with, and upon the effectiveness of, Delta's exit from bankruptcy. Neither KCAB, the Bond Trustee nor the 1992 Bondholders shall be allowed any claim in the Bankruptcy Cases, other than the Bankruptcy Claim, with respect to the Guaranty or the Tax Certificate.

15. Upon Closing, but effective as of the Effective Date, the Bond Trustee, as trustee and on behalf of all of the 1992 Bondholders, shall have an allowed

pre-petition, non-priority, unsecured claim against Delta in its Bankruptcy Case in the amount of $260,000,000 not subject to offset, recoupment, deduction, counterclaim or objection, of any kind or nature, by any party (the "Bankruptcy Claim"), which allowed Bankruptcy Claim shall be treated at least as favorably as any unsecured claim in Delta Class 4 under the Plan. Except as set forth in the immediately preceding sentence and except with respect to the Delta Note and the Bond Trustee's rights set forth in the Settlement Agreement and the Implementing Agreements to which the Bond Trustee is a party, the Bond Trustee, as trustee, and the 1992 Bondholders, shall not have any other claim in the Bankruptcy Cases with regard to the 1992 Bond Agreements whatsoever, including without limitation any bankruptcy or other claim of any type or amount with respect to the 1992 Bond Agreements or under any other agreement or law with respect to the 1992 Bonds or 1992 Bond Facilities. Notwithstanding anything to the contrary in the Plan, the appropriate initial distribution under the Plan with respect to the Bankruptcy Claim shall be made to the Bond Trustee, after or at Closing, on the Initial Distribution Date, as defined in the Plan, provided that the Closing has occurred.

16. As of the Closing Date, Delta will be deemed to have assumed the Airport Use Agreement, as amended, including prepetition and postpetition obligations pursuant thereto, and Delta is hereby authorized and directed to make a cure payment in the amount of $52,321.12 in satisfaction prepetition amounts owed to KCAB under such agreement.

17. Delta is authorized to reimburse to the Bond Trustee those amounts set forth in and in accordance with Section 3.02(j) of the Settlement Agreement.

18. This Settlement Order and the Settlement Agreement incorporated herein is and shall be binding on Delta, KCAB, the Bond Trustee, and the 1992 Bondholders, and each of their predecessors or successors.

19. This Settlement Order shall be binding on the Bond Trustee solely in its capacity as a trustee with respect to the 1992 Bonds, and not in any other capacity, including, but not limited to, its capacity as a holder of any claim against Delta and/or its affiliates (unrelated to the 1992 Bond Agreements) or as the trustee with respect to any other bonds related to Delta and/or its affiliates.

20. This Settlement Order shall be binding on each 1992 Bondholder solely in such bondholder's capacity as a 1992 Bondholder, and not in any other capacity, including, but not limited to, its capacity as the holder of any other claim against Delta and/or its affiliates (unrelated to the 1992 Bond Agreements) or as the holder of any bond other than the 1992 Bonds related to Delta or its affiliates.

21. The Bond Trustee shall be entitled in its sole discretion to establish one or more record dates for the 1992 Bondholders for the purpose of distributions on the 1992 Bonds including distributions on the Bankruptcy Claim.

22. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Settlement Order and the Settlement Agreement.

23. With the exception of Sections 3.02(b) and 4.02, which were immediately effective, the effectiveness of the Settlement Agreement is conditioned upon the confirmation of the Plan and the occurrence of its Effective Date.

24. In accordance with Bankruptcy Rule 6004(g), the terms and conditions of this Settlement Order shall be effective and enforceable as of 10:00 A.M., prevailing Eastern time, May 3, 2007.

Dated: April 24, 2007
White Plains, New York

/s/ Adlai S. Hardin, Jr.
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A TO ORDER

TRUST INDENTURE

between

KENTON COUNTY AIRPORT BOARD

and

STAR BANK, N.A.
as Trustee

Dated as of February 1, 1992

Authorizing

$419,000,000
Kenton County Airport Board
Special Facilities Revenue Bonds
1992 Series A
(Delta Air Lines, Inc. Project)

$19,000,000
Kenton County Airport Board
Special Facilities Revenue Bonds
1992 Series B
(Delta Air Lines, Inc. Project)

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(This Table of Contents is not a part of the Indenture and is for convenience only. The captions herein are of no legal effect and do not vary the meaning or legal effect of any part of the Indenture.)

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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of February 1, 1992, is made by and between KENTON COUNTY AIRPORT BOARD (the "Issuer"), a public body corporate and politic duly organized and validly existing under the Constitution and laws of the Commonwealth of Kentucky, including, inter alia, Chapter 183 of the Kentucky Revised Statutes, and STAR BANK, N.A., as trustee (the "Trustee"), a national banking association duly organized and validly existing under the laws of the United States and duly authorized to exercise the trusts accepted hereunder (the capitalized terms used in the recitals and granting clauses are used as defined in Article I hereof),

WITNESSETH :

WHEREAS, the Issuer is authorized under the provisions of the Act to issue its bonds for the purpose of financing qualified airport facilities, as provided by the Code; and

WHEREAS, in furtherance of its statutory purposes, and pursuant to its Bond Resolution duly adopted on February 13, 1992, the Issuer has authorized the issuance and sale of its Special Facilities Revenue Bonds, 1992 Series A (Delta Air Lines, Inc. Project) in the aggregate principal amount of $419,000,000 (the "1992 Series A Bonds") and (ii) its Special Facilities Revenue Bonds, 1992 Series B (Delta Air Lines, Inc. Project), in the aggregate principal amount of $19,000,000 (the "1992 Series B Bonds"), such 1992 Series A Bonds and the 1992 Series B Bonds ranking on a basis of parity and equality with one another and with any Additional Bonds hereafter issued under authority of this Indenture and being ratably secured by this Indenture; and

WHEREAS, the Issuer and the Company have entered into a Lease Agreement, dated as of February 1, 1992 (the "Agreement"), pursuant to which the Issuer will issue the 1992 Series A and B Bonds for the financing of the Project Facilities, hereinafter defined (the proceeds of the 1992 Series A and B Bonds being applied to separate, discrete components of the Project Facilities), which Project Facilities will be governmentally owned by the Issuer, and will lease certain of the Project Facilities to the Company in accordance with restrictions provided in the Code; and

WHEREAS, the Agreement further provides that in consideration of the application of the proceeds of the 1992 Series A and B Bonds to the financing of the Project Facilities and the leasing of the Project Facilities to. the Company, the Company will agree to pay rents as stipulated in the Agreement sufficient to pay the principal of, redemption premium (if any) and interest on, the 1992 Series A and B Bonds whether at maturity, upon redemption, or otherwise, and payment of the purchase price of any 1992 Series A and B Bonds required to be purchased pursuant to Section 2.02 at the times required by such Section; and

WHEREAS, the Issuer, to secure payment of the 1992 Series A and B Bonds, will assign its right, title and interest in the Agreement (except for certain Unassigned Rights, as therein described) to the Trustee for the benefit of the Owners of the Bonds;

NOW, THEREFORE, for and in consideration of these premises and the mutual covenants herein contained, of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the Bonds by the Owners thereof from

time to time, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of or purchase price and interest on and any redemption premium on the Bonds which are at any time Outstanding under this Indenture according to their tenor and effect, and the performance and observance by the Issuer of all the covenants and conditions expressed or implied herein and contained in the Bonds, the Issuer does hereby grant, bargain, sell, convey, assign, transfer and set over to the Trustee, its successors in trust and their assigns forever, without recourse, the Trust Estate;

TO HAVE AND TO HOLD all of the Trust Estate with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee, its successors in trust and their assigns forever; nevertheless, to inure to the use and benefit of the Owners of all the Bonds, for the securing of the observance or performance of all the terms, provisions and conditions herein contained and for the equal and proportionate benefit and security of all and singular the present and future Owners of the Bonds issued and secured hereunder, without preference, priority, prejudice or distinction as to lien or otherwise, of any one Bond over any other to the end that each Owner of a Bond secured by this Indenture shall have the same rights, privileges and liens under and by virtue of this Indenture;

PROVIDED, HOWEVER, that if, after the right, title and interest of the Trustee in and to the Trust Estate shall have ceased, terminated and become void in accordance with Article VIII hereof, then and in that case these presents and the estate and rights hereby granted shall cease, determine and be void, and

thereupon the Trustee shall cancel and discharge this Indenture and execute and deliver to the Issuer and the Company such instruments in writing as shall be requisite to evidence the discharge hereof; otherwise this Indenture shall be and remain in full force and effect.

THIS TRUST INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered, and the Trust Estate and the other estates and rights hereby granted are to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Owners, from time to time, of the Bonds, as follows:

(Article I begins on the following page)

ARTICLE I.

DEFINITIONS

SECTION 1.01. Definitions. The terms defined in this Article shall, for all purposes of this Indenture, have the meanings herein specified, unless the context clearly requires otherwise. All words and phrases defined in Article I of the Agreement shall have the same meanings, respectively, when used in this Indenture.

"Act" shall mean Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes.

"Additional Bonds" shall mean any additional Series of Bonds issued under and pursuant to the provisions of Section 2.10 of this Indenture and, unless the context otherwise requires, any Refunding Bonds issued under and pursuant to the provisions of Section 2.11 of this Indenture.

"Agreement" shall mean the Lease Agreement, dated as of February 1, 1992, between the Issuer and the Company, and any and all modifications, alterations, amendments and supplements thereto.

"Airport" shall mean the Cincinnati/Northern Kentucky International Airport located in Boone County, Kentucky, together with any improvements thereto or enlargements thereof and all functionally related and subordinate facilities related thereto.

"Alternate Credit Facility" shall mean an irrevocable letter of credit (other than an Alternate Letter of Credit), a municipal bond insurance policy, a surety bond, line or lines of credit or other similar agreement or agreements or any other agreement or agreements used to provide liquidity or credit support for all or any portion of the Bonds of a Series,

satisfactory to the Company and containing administrative provisions reasonably satisfactory to the Trustee, issued and delivered to the Trustee in accordance with Section 4.11(b) of this Indenture.

"Alternate Letter of Credit" shall mean an irrevocable letter of credit issued and delivered to the Trustee with respect to a Series of Bonds in accordance with Section 4.11(a) of this Indenture.

"Authenticating Agent" shall mean the Registrar and any additional or successor Authenticating Agent as may be appointed from time to time pursuant to Section 10.26.

"Authorized Company Representative" shall mean the person or persons at the time designated to act on behalf of the Company by written certificate furnished to the Issuer and the Trustee containing the specimen signature of each such, person and signed on behalf of the Company by its Chief Executive Officer, Chief Financial Officer, Senior Vice President—Technical Operations, Senior Vice President—Stations, Vice President—Treasurer and such other officers as may be designated by the Chief Executive Officer.

"Authorized Issuer Representative" shall have the meaning set forth in the Agreement.

"Authorized Denominations" shall mean: (i) with respect to any Long-Term Interest Rate Period, $5,000 and any integral multiple thereof; and (ii) with respect to any Short-Term Interest Rate Period or Weekly Interest Rate Period, $100,000 and any integral multiple thereof.

"Available Moneys" means (a) with respect to any date on which a payment is due on the Bonds of a

Series during the term of any Credit Facility with respect to such Bonds (i) moneys which have been paid to the Trustee by the Company and have been on deposit with the Trustee in a separate and segregated account or accounts or sub-account or sub-accounts for at least 183 days during and prior to which no Event of Bankruptcy shall have occurred (the "Aging Period"), (ii) proceeds on deposit with the Tender Agent of such Bonds from the remarketing by the Remarketing Agent for such Bonds, which were at all times since their receipt by such Tender Agent held in a separate and segregated account or accounts or sub-account or sub-accounts in which no moneys which were not Available Moneys were at any time held, (iii) moneys drawn under such Credit Facility which at all times since their receipt by the Trustee or such Tender Agent were held in a separate and segregated account or accounts or sub-account or sub-accounts in which no moneys (other than those drawn under such Credit Facility) were at any time held, (iv) proceeds from the issuance and sale of other Bonds of the Issuer if there is delivered to the Trustee at the time of issuance and sale of such bonds an opinion of Bankruptcy Counsel (which may assume that no Bondholder is an "insider" as defined in the Bankruptcy Code) to the effect that the use of such proceeds to pay the principal of, premium, if any, purchase price or interest on the Bonds would not be avoidable as preferential payments under Section 547 of the Bankruptcy Code if an Event of Bankruptcy shall have occurred, and (v) investment earnings on any of the moneys described in clauses (i), (ii), (iii) or (iv) of this definition and (b) with respect to any payment date on the Bonds of a Series not occurring during the term of a Credit Facility with respect to such Bonds, any moneys furnished to the Trustee

or such Tender Agent and the proceeds from the investment thereof.

"Bank" means, with respect to any Letter of Credit provided for Bonds of any Series, the Issuer of such Letter of Credit, or its successors and assigns. "Principal Office" of the Bank shall mean the office of the Bank as set forth in Section 14.08, or such other office of the Bank as it may designate in writing to the Issuer, the Trustee, the Tender Agent, the Paying Agent, the Authenticating Agent, the Remarketing Agent, the Registrar, and the Company.

"Bankruptcy Code" shall mean the Bankruptcy Reform Act of 1978, as amended (Title 11 of the United States Code, as amended).

"Bankruptcy Counsel" shall mean Counsel of nationally recognized expertise in bankruptcy matters (which may be Bond Counsel).

"Bond" or "Bonds" shall mean the bonds authorized to be issued under this Indenture, including, inter alia, the 1992 Series A and B Bonds and all Additional Bonds.

"Bond Counsel" shall mean an attorney or a firm of attorneys, designated by the Company, of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any State of the United States of America.

"Bond Fund" shall mean the fund created by Section 4.01.

"Bond Interest Term" shall mean, with respect to any Bond of a Series, each period established in accordance with Section 2.01(g) during which such Bond shall bear interest at a Bond Interest Term Rate.

"Bond Interest Term Rate" shall mean with respect to each Bond, a term, non-variable interest rate on such Bond established periodically in accordance with Section 2.01(g).

"Bond Purchase Fund" shall mean the fund so designated which is established with the Tender Agent pursuant to the Tender Agreement and Section 13.01(b)(ii). No moneys realized pursuant to the exercise of rights by the Trustee under the Credit Facility shall be deposited into, or constitute a part of, the Bond Purchase Fund.

"Bond Year" means, during the period while any Series of Bonds remain Outstanding, the annual period provided for the computation of Excess Earnings under Section 148(f)(2) of the Code and Treasury Regulations 1-148-8T(b)(2) promulgated thereunder.

"Business Day" shall mean any day other than a Saturday, a Sunday or any other day on which banks located in any of the cities in which the Principal Offices of the Trustee, the Tender Agent, the Paying Agent, the Registrar, the Remarketing Agent, the Company, the Authenticating Agent or the issuer of any Credit Facility is located is authorized or required to remain closed.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code herein shall be deemed to include the final, proposed and temporary United States Treasury Regulations thereunder, as the same may be in effect from time to time, to the extent the same are applicable, unless the context clearly requires otherwise.

"Commonwealth" shall have the meaning set forth in the Agreement.

"Company" shall mean Delta Air Lines, Inc., a corporation organized and existing under the laws of the State of Delaware, and duly qualified to do business in the Commonwealth, its successors and their assigns and any transferee entity to the extent permitted by Section 6.01 of the Agreement.

"Company Account" shall mean the account bearing such name which is created by the Tender Agreement.

"Completion Date" shall have the meaning set forth in the Agreement.

"Construction Fund" means the fund of such name created by Section 5.01 of this Indenture.

"Costs of Construction" shall have the meaning set forth in Section 5.01 of this Indenture.

"Counsel" shall mean an attorney or a firm of attorneys admitted to practice law in the highest court of any state in the United States of America or in the District of Columbia.

"Credit Bank," initially, shall mean, with respect to the Bonds of a Series secured by a Credit Facility, the Bank, and, upon the effectiveness of an Alternate Letter of Credit or an Alternate Credit Facility, shall mean the bank or banks or other financial institution or financial institutions issuing such Alternate Letter of Credit or Alternate Credit Facility. In the case of any Alternate Letter of Credit or Alternate Credit Facility to which more than one bank or financial institution is a party, notices required by this Indenture to be given to the Credit Bank may be given to the bank or financial institution under such Credit Facility appointed to act as agent for all such banks or financial institutions.

"Credit Bank Account" shall mean the account bearing such name or any like or similar account which is created pursuant to the Tender Agreement.

"Credit Facility" shall mean (i) initially, with respect to the Bonds of a Series, the Letter of Credit, if any, and upon the effectiveness of an Alternate Letter of Credit or an Alternate Credit Facility with respect to such Bonds, shall mean such Alternate Letter of Credit or Alternate Credit Facility.

"Date of Issuance" means, with respect to any Series of Bonds, the date of original issuance and delivery of such Series of Bonds.

"Determination of Taxability" shall have the meaning given to such term in Section 9.02 of the Agreement.

"DTC" means The Depository Trust Company, New York, New York, or its nominee, or its successors and assigns, or any other depository performing similar functions.

"Duff" shall mean Duff & Phelps, Inc., a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and, if such corporation shall be dissolved or liquidated, or shall no longer perform the functions of a securities rating agency, "Duff" shall be deemed to refer to any other nationally recognized securities rating agency (other than Moody's and S&P) designated by the Company, with the approval of the Remarketing Agent, by notice to the Trustee, the Tender Agent and the Issuer.

"Escrow Bonds" shall have the meaning given to such term in the Tender Agreement.

"Event of Bankruptcy" means the commencement of a case by or against the Company or the Issuer under

the Bankruptcy Code or under any other domestic bankruptcy act or any similar act which hereafter may be enacted (other than such proceedings initiated by the Company or the Issuer against third parties), unless such case shall have been dismissed and such dismissal shall be final and not subject to appeal.

"Event of Default" shall mean any of the events described in Section 9.01.

"Excess Earnings" means, separately, in the case of each of the Series of Bonds issued pursuant to authority of this Indenture, an amount equal to the sum of (i) plus (ii) where:

(i) is the excess of

(a) the aggregate amount earned from the Date of Issuance on all nonpurpose investments in which gross proceeds of a Series of Bonds are invested (other than investments attributable to an excess described in this clause (i)), over

(b) the amount that would have been earned if such nonpurpose obligations (other than investments attributable to an excess described in this clause (1)) were invested at a rate equal to the yield on such Bonds; and

(ii) is any income attributable to the excess described in clause (i).

The sum of (i) plus (ii) shall be determined in accordance with Section 148(f)(2) of the Code. As used herein, the terms "gross proceeds", "nonpurpose investments" and "yield" have the meanings assigned to them for purposes of Section 148(f)(6) of the Code and applicable Income Tax Regulations.

"Facility Rentals" means the rentals required to be paid by the Company for the rental of the Project Facilities, pursuant to Section 4.03(a) of the Agreement.

"Favorable Opinion of Bond Counsel" shall mean an opinion of Harper, Ferguson & Davis, or other Bond Counsel, addressed to the Issuer, the Remarketing Agent, the Company and the Trustee to the effect that the action proposed to be taken is authorized or permitted by the laws of the Commonwealth and this Indenture and will not adversely affect any exclusion from gross income for federal income tax purposes of interest on a Series of the Bonds.

"Government Obligations" shall mean direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

"Guaranty" means the Guaranty dated as of February 1, 1992, from the Company to the Trustee.

"Indenture" shall mean this Trust Indenture, and any amendments or supplements hereto.

"Interest Accrual Date" shall mean (i) with respect to any Weekly Interest Rate Period for Bonds of a Series, the first day thereof, and, thereafter, the first Wednesday of each month during that Weekly Interest Rate Period, (ii) with respect to any Long-Term Interest Rate Period for Bonds of a Series, the first day thereof and, thereafter, each Interest Payment Date in respect thereof, other than the last such Interest Payment Date, and (iii) with respect to each Bond Interest Term within a Short-Term Interest Rate Period for Bonds of a Series, the first day thereof.

"Interest Payment Date" shall mean, (a) with respect to the 1992 Series A and B Bonds, (i) with respect to any Weekly Interest Rate Period, the first Wednesday of each calendar month, or, if such first Wednesday shall not be a Business Day, the next succeeding Business Day, (ii) with respect to any Long-Term Interest Rate Period, the first day of a month and the first day of each sixth month thereafter, as determined by the Company, or if any of such days shall not be a Business Day, the next succeeding Business Day, the first Interest Payment Date during a Long-Term Interest Rate Period being the first day of such months which is at least 90 days from the first day of such Long-Term Interest Rate Period, (iii) with respect to any Bond Interest Term, the day next succeeding the last day thereof, and (iv) with respect to each Interest Rate Period, the day next succeeding the last day thereof; and (b) with respect to any Series of Additional Bonds, the date or dates specified in the Supplemental Indenture providing for the issuance thereof.

"Interest Rate Period" shall mean, with respect to Bonds of a Series, any Weekly Interest Rate Period, Short-Term Interest Rate Period or Long-Term Interest Rate Period.

"Investment Securities" shall mean any of the following obligations or securities: (a) Government Obligations; (b) obligations issued or guaranteed by any person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States; (c) negotiable or non-negotiable certificates of deposit and time deposits issued by any bank, trust company or national banking association having combined capital, surplus and undivided

profits of not less than $100,000,000 (including the Trustee, the Paying Agent, the Registrar, the Tender Agent, the Authenticating Agent and the Credit Bank); (d) unsecured promissory notes of industrial, utility or financial corporations issued directly or through a dealer rated at least P-1, A-1, or Duff-1 or their equivalent, by either Moody's, S&P or Duff, respectively, or their successors; (e) bankers acceptances drawn on and accepted by commercial banks having combined capital, surplus and undivided profits of not less than $100,000,000; (f) public housing bonds issued by public housing authorities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or public notes issued by public housing authorities or public notes issued by local public agencies, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America; (g) corporate bonds rated at least "AA" or its equivalent by either Moody's, S&P or Duff, or their successors; (h) repurchase agreements fully secured by obligations of the type specified in (a) through (g) above (excluding those obligations described in (c) and (d)); (i) bonds or other obligations of any county, municipal corporation, school district, political subdivision, authority, or body of any state or bonds or obligations of the Commonwealth or its agencies which, in any case, are rated by a nationally recognized rating agency in any of its three highest Rating Categories; (j) any other investments to the extent then permitted by law, including any tax-exempt bond or any investments not treated as "investment property" as defined in Section 148(b)(2) of the Code, as described in Treasury Notice 87-22

released February 24, 1987 and income tax regulations promulgated in respect thereto and (k) any mutual fund or unit investment trust which represents investments in underlying securities consisting only of the Investment Securities described in clauses (a) through (j) hereof, provided, however, that no such moneys shall ever be invested or reinvested in any obligations, direct or indirect, of the Company or any "prohibited payment" as described in the income tax regulations promulgated under Section 148(f) of the Code or any applicable successor regulations. The Trustee may make any and all such investments through its own investment department. Investments or deposits in certificates of deposit or pursuant to investment contracts shall not be made without compliance, at or prior to such investment or deposit, with the requirements of applicable Treasury Regulations.

"Issuer" shall mean the Kenton County Airport Board, a public body corporate and politic duly organized and validly existing under the laws of the Commonwealth, or, if such entity shall be abolished, the authority, board, body, commission or agency succeeding to the principal functions thereof or to which the powers and duties granted or imposed by the Indenture shall be given by law.

"Letter of Credit" shall mean, with respect to the Bonds of a Series, the first irrevocable letter of credit, if any, originally issued to the Trustee by the Bank on the Date of Issuance of such Bonds, as the same may be amended, supplemented or extended.

"Long-Term Interest Rate" shall mean, with respect to Bonds of a Series, a term, non-variable interest rate on such Bonds established in accordance with Section 2.01(f).

"Long-Term Interest Rate Period" shall mean each period during which a Long-Term Interest Rate is in effect, with respect to the Bonds of a Series.

"Moody's" shall mean Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such Corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P and Duff) designated by the Company, with the approval of the Remarketing Agent, by notice to the Trustee, the Tender Agent and the Issuer.

"Outstanding," when used in reference to the Bonds, shall mean, as at any particular date, the aggregate of all Bonds authenticated and delivered under this Indenture except:

(a) those Bonds cancelled at or prior to such date or delivered to or held by the Registrar at or prior to such date for cancellation;

(b) those Bonds deemed to be paid in accordance with Article VIII;

(c) those Bonds in lieu of or in exchange, replacement or substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Trustee, the Registrar and the Company is presented that such Bond is held by a bona fide holder in due course; and

(d) Undelivered Bonds where funds in the amount of the purchase price of such Bonds are available for

payment to the Owner(s) thereof on the date and at the time specified for the pertinent tender.

"Owner" shall mean the person or entity in whose name any Bond is registered upon the registration books maintained pursuant to Section 2.08.

"Paying Agent" shall mean the Trustee, and, with respect to the 1992 Series A and B Bonds, shall also mean any additional paying agent or agents appointed in accordance with Section 10.21, and with respect to a Series of Additional Bonds shall mean any Paying Agent or successor or additional Paying Agent appointed pursuant to Section 10.21 hereof. If two or more paying agents have been appointed and are acting in such capacity, each shall be considered to be a co-paying agent. "Principal Office" of the Paying Agent shall mean the address set forth in Section 14.08. With respect to any successor paying agent or agents, the term "Principal Office" shall mean such other office or offices thereof designated in writing to the Issuer, the Trustee, the Company, the Registrar, the Tender Agent, the Authenticating Agent and the Remarketing Agent.

"Project Facilities" shall mean the Project Facilities as defined in the Agreement.

"Rating Category" shall mean a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

"Rebate Fund" shall mean the fund created by Section 4.09.

"Receipts and Revenues" shall mean (a) the Facility Rentals, (b) all other moneys received or to be

received by the Trustee (for the account of the Issuer) in respect of repayment of the 1992 Series A and B Bonds and any issues of Additional Bonds, including, without limitation, moneys in the Bond Fund and any other such moneys received in connection with any Series of Additional Bonds and (c) all income and profit from the investment of the foregoing moneys. The term "Receipts and Revenues" does not include (i) any moneys or investments in any Rebate Funds, (ii) moneys realized pursuant to the exercise of rights by the Trustee under the Credit Facility (iii) moneys held by the Tender Agent in any Bond Purchase Fund established pursuant to the Tender Agreement and Section 13.01(b)(ii) hereof and (iv) moneys and securities held by the Trustee pursuant to Section 8.01 hereof for payment to Owners of Bonds.

"Record Date" shall mean, with respect to any Series of Bonds, (a) with respect to any Interest Payment Date in respect of any Weekly Interest Rate Period or any Bond Interest Term, the Business Day immediately preceding such Interest Payment Date, and (b) with respect to any Interest Payment Date in respect of any Long-Term Interest Rate Period, the fifteenth day of the calendar month next preceding such Interest Payment Date.

"Refunding Bonds" shall mean any one or more series of Bonds authorized to be issued by the Issuer pursuant to Section 2.11 of this Indenture.

"Registrar" shall mean the registrar or registrars appointed in accordance with Section 10.23 and any successor or additional Registrar appointed in accordance with Section 10.23 with respect to a Series of Bonds. "Principal Office" of the Registrar shall mean the principal office of the Registrar set forth in Section 14.08, or such other office thereof designated in

writing to the Issuer, the Trustee, the Credit Bank, the Tender Agent, the Paying Agent, the Authenticating Agent, the Remarketing Agent and the Company.

"Reimbursement Agreement" shall mean, with respect to any Series of Bonds, the Reimbursement Agreement between the Company and the Bank pursuant to which the Letter of Credit, if any, is issued by the Bank, as the same may be amended or supplemented, or such other agreement or agreements as may be entered into from time to time between the Company and the provider of any Alternate Letter of Credit or Alternate Credit Facility.

"Remarketing Account" shall mean the account so designated which is created pursuant to the Tender Agreement.

"Remarketing Agent" shall mean, with respect to .a Series of Bonds the initial and any successor or additional remarketing agent, if any, appointed for such Series of Bonds in accordance with Section 13.01(a) hereof. "Principal office" of the Remarketing Agent shall mean the address for the Remarketing Agent set forth in Section 14.08, or such other office thereof designated in writing to the Issuer, the Trustee, the Registrar, the Tender Agent, the Paying Agent, the Credit Bank, the Company and the Authenticating Agent.

"Remarketing Agreement" shall mean, with respect to a Series of Bonds, the Remarketing Agreement, if any, entered into in connection with such Series of Bonds and designated as a remarketing agreement pursuant to this Indenture and any Supplemental Indenture providing for the issuance thereof and any supplements or amendments thereto.

"Reserved Rights" shall mean the following rights of the Issuer under the Agreement which are assigned to the Trustee hereunder but which are also reserved and may be enforced by the Issuer:

(i) to receive any notices provided for under the Agreement;

(ii) to enforce the tax covenants of Section 6.16 of the Agreement; and

(iii) all rights and remedies with respect to the foregoing Reserved Rights.

"Series" or "Series of Bonds" means any series of Bonds issued pursuant to authority of this Indenture.

"S&P" shall mean Standard & Poor's Corporation, a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency (other than Moody's and Duff) designated by the Company, with the approval of the Remarketing Agent, by notice to the Trustee, the Tender Agent, the Authenticating Agent and the Issuer.

"Short-Term Interest Rate Period" shall mean each period, comprised of Bond Interest Terms, during which Bond Interest Term Rates are in effect.

"Special Record Date" shall mean, with respect to any Bond, the date established by the Registrar in connection with the payment of overdue interest on that Bond pursuant to Section 2.01(k).

"Stated Amount" with respect to any Credit Facility, shall have the meaning given such term in such Credit Facility.

"Supplemental Indenture" shall mean any indenture of the Issuer modifying, amending or supplementing this Indenture for any purpose.

"Tax Counsel" shall mean any nationally recognized attorney or firm of attorneys experienced in matters relating to the tax exemption of interest on bonds of States and their political subdivisions, including Bond Counsel.

"Tender Agent" shall mean, with respect to a Series of Bonds, the initial and any successor tender agent appointed in accordance with Section 13.01(b) and any additional Tender Agent appointed in accordance with Section 13.01(b) with respect to any such Series of Bonds. "Principal Office' of the Tender Agent shall mean the address of the Tender Agent set forth in Section 14.08 hereof or in a Supplemental Indenture or such other office thereof designated in writing to the Issuer, the Trustee, the Registrar, the Paying Agent, the Authenticating Agent, the Company, the Credit Bank and the Remarketing Agent.

"Tender Agreement" shall mean (i) with respect to any Series of Bonds, the tender agent agreement, if any, entered into in connection with such Series of Bonds and designated a tender agent agreement pursuant to this Indenture or any Supplemental Indenture providing for the issuance thereof and any supplements or amendments thereto.

"Trust Estate" shall mean all right, title and interest of the Issuer in and to the Agreement (except for Unassigned Rights but including Reserved Rights), including without limitation (a) the proceeds of the

1992 Series A and B Bonds, pending their disbursement (b) the proceeds of any Series of Additional Bonds, pending their disbursement, (c) with respect to the Owners of Bonds secured by a Credit Facility, the specific moneys realized pursuant to the exercise of rights by the Trustee under such Credit Facility, (d) the Receipts and Revenues, (e) all moneys and obligations which at the time are deposited or are required to be deposited with, or are held or are required to be held by or on behalf of the Trustee or any Paying Agent in trust under any of the provisions of this Indenture (other than in the Rebate Fund) and (f) all other rights, titles and interests which at such time are subject to the lien of this Indenture, provided, that there are excluded from the foregoing (i) moneys or obligations deposited with or paid to the Trustee or any Paying Agent for the redemption or payment of Bonds which are deemed to have been paid in accordance with Article VIII hereof, (ii) funds held pursuant to Section 4.06 hereof, (iii) any moneys or obligations held by the Trustee in any Rebate Fund and (iv) moneys held in any Bond Purchase Fund pursuant to Section 13.01(b)(ii) hereof.

"Trustee" shall mean Star Bank, N.A., Cincinnati, Ohio, and any successor thereto and co-trustee appointed pursuant hereto. "Principal Office" of the Trustee shall mean the principal corporate trust office of the Trustee, which office at the date of acceptance by the Trustee of the duties and obligations imposed on the Trustee by this Indenture is located at the address specified in Section 14.08.

"Unassigned Rights" shall mean all (i) rights and remedies of the Issuer under the Agreement with respect to Sections 3.01, 3.02, 3.03 (except with

respect to the rights of the Trustee regarding the application of proceeds of Bonds), 3.04 (except with respect to the rights of the Trustee as provided therein), 3.05, 3.06, 3.08, 5.01, 5.02, 5.03, 5.04 (except with respect to all rights, duties and obligations regarding the application of moneys derived thereunder to the redemption, purchase or defeasance of Bonds as provided in such Section 5.04, which rights, duties and obligations are expressly assigned to the Trustee), 5.05, 5.06, 6.03, 6.04, 6.06, 6.07, 6.09, 6.13, 6.16, 7.01, (except with respect to all rights, duties and obligations regarding the application of moneys derived thereunder to the redemption, purchase or defeasance of Bonds as provided in such Section 7.01, which rights, duties and obligations are expressly assigned to the Trustee), 7.02 (except with respect to all rights, duties and obligations regarding the application of moneys derived thereunder to the redemption, purchase or defeasance of Bonds as provided in such Section 7.02, which rights, duties and obligations are expressly assigned to the Trustee), 8.07 (except with respect to all rights, duties and obligations regarding the application of moneys derived thereunder to the redemption, purchase or defeasance of Bonds as provided in such Section 8.07, which rights, duties and obligations are expressly assigned to the Trustee), 10.04 and (ii) the rights of the Issuer to amounts payable under Section 6.08 of the Agreement, which expressly are not assigned to the Trustee but are reserved solely to and may be enforced solely by the Issuer and shall not constitute part of the Trust Estate.

"Undelivered Bonds" shall mean any Bond so designated in accordance with the provisions of Section 2.02(f).

"Weekly Interest Rate" shall mean a variable interest rate on the Bonds of a Series established in accordance with Section 2.01(e).

"Weekly Interest Rate Period" shall mean each period during which a Weekly Interest Rate is in effect.

"1992 Series A Bonds" shall mean the Series of Bonds authorized pursuant to Section 2.01(b) of this Indenture.

"1992 Series B Bonds" shall mean the Series of Bonds authorized pursuant to Section 2.01(b)(2) of this Indenture.

"1992 Series A and/or B Bones" shall mean the 1992 Series A Bonds and/or the 1992 Series B Bonds authorized pursuant to this Indenture.

Section 1.02. Interpretation. Any reference herein to the Issuer or to any member or officer thereof includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the Commonwealth or the Act, or to a section, provision or chapter of the Kentucky Revised Statutes, as amended, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Owners of the Bonds, the Trustee or the Company under this Indenture.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof", "hereby", "herein", "hereto", "hereunder" and similar terms refer to this Indenture; and the term "hereafter" means after, and the term "heretofore" means before, the date of effectiveness of this Indenture. Words of any gender include the correlative words of other genders, unless the sense indicates otherwise.

Any reference to an Article number (e.g., Article IV) or a Section number (e.g., Section 5.01) shall be construed to be a reference to the designated Article number or Section number hereof unless the use or context clearly indicates otherwise.

Section 1.03. Captions and Headings. The captions and headings in this Indenture are solely for the convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II

THE BONDS

SECTION 2.01. Issuance of Bonds.

(a) Pursuant to authority of the Act, there is hereby established and created under this Indenture an issue of revenue Bonds of the Issuer, to be known and designated as the "Kenton County Airport Board Special Facilities (Adjustable Tender) Revenue Bonds (Delta Aix Lines, Inc. Project)." The Bonds may be issued hereunder in series from time to time as hereinafter provided in this Section 2.01 and Sections 2.10 and 2.11. The Bonds may be issued as separate series in any Interest Rate Period authorized by this Indenture, subject to all of the provisions hereof. Subject to the provisions of this Section 2.01 and Sections 2.10 and 2.11, the aggregate principal amount of Bonds which may be issued hereunder and secured hereby and be Outstanding at any time is not limited as to amount, except as may otherwise hereafter be provided by law. The Bonds shall be equally and ratably secured hereunder by the assignments, pledges and charges made or created herein of or on the properties of the Trust Estate for the payment and security of the Bonds and by a co-equal lien thereon, without priority by reason of series, number, date of execution hereof or of any Supplemental Indenture providing for the issuance thereof, date of Bonds, date of sale, date of execution, date of authentication, date of issuance, date of delivery, or otherwise, and without regard to which section hereof the Bonds are issued under. Any Series of Bonds may be independently secured by a Letter of Credit or other Credit Facility. The aforesaid lien and charge of the Bonds shall constitute a prior and superior lien and charge on the Receipts and Revenues and the other moneys

and securities from time to time held hereunder, subject only to the provisions of this Indenture permitting the application of the Receipts and Revenues and such other moneys and securities for the purposes and on the terms and conditions hereof, over and ahead of any claims (whether in tort, contract or otherwise and irrespective of whether or not the parties possessing such claims have notice of the foregoing pledges, liens or charges), encumbrances or obligations of any nature hereafter arising or incurred, and over and ahead of all other indebtedness payable from or secured by the Receipts and Revenues and such other moneys and securities which may hereafter be created and incurred. The foregoing pledges, liens, charges, and assignments to the Trustee shall be valid and binding from the time of the delivery of and payment for the Bonds issued hereunder, and the moneys representing the Receipts and Revenues shall thereupon be immediately subject to the pledge, lien and charge hereof upon receipt thereof by the Issuer or the Trustee or the Registrar hereunder without any physical delivery or further act.

Except as expressly provided herein or in the Bonds, the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity and except as to the separate security for any Series of Bonds of specific Letters of Credit or Credit Facilities and except as to sinking fund accounts or other funds or accounts which may be established) of any of the Bonds over any of the others for any reason or cause whatsoever and all Bonds shall rank pari passu and shall be secured

equally and ratably hereunder without discrimination or preference whatsoever.

No Owner of a Bond shall be required to see that the moneys derived from such Bond are applied to the purpose or purposes for which the Bond is issued. The validity of the Bonds shall neither be dependent upon nor affected by the validity or regularity of any proceedings or contracts relating to the acquisition, construction, improvement, equipping or furnishing of the Project Facilities, nor the use and application of the proceeds of the Bonds.

Nothing herein shall prevent the Company from affording any particular Series of Additional Bonds additional or different security through a Credit Facility or Alternate or substitute Credit Facility or by providing no such credit facility, or by the establishment of separate funds and accounts with respect to a particular Series of Additional Bonds, or otherwise.

(b)(1) 1992 Series A Bonds. There is hereby authorized for issuance and delivery under this Indenture, for the purpose of financing a portion of the Costs of Construction of certain of the Project Facilities, described in Exhibit A to the Agreement, a Series of 1992 Series A Bonds, entitled to the benefit, protection and security of this Indenture, limited in aggregate principal amount to $419,000,000 (excluding any 1992 Series A Bonds which may be authenticated in exchange for, in substitution for or otherwise in lieu of, other 1992 Series A Bonds pursuant to any provisions of this Indenture). The 1992 Series A Bonds shall be designated by the title "Kenton County Airport Board Special Facilities Revenue Bonds, 1992 Series A (Delta Air Lines, Inc. Project)." The 1992 Series A Bonds shall mature, subject to prior redemp-

tion, upon the terms and conditions hereinafter set forth, and shall bear interest to maturity as follows:

Maturity (February 1)	Principal Amount	Interest Rate	Issue Price
2002	$20,000,000	6.750%	100%
2012	50,000,000	7.500	100%
2020	119,000,000	7.500	98.839%
2021	130,000,000	7.125	95.360%
2022	100,000,000	6.125	84.200%

(b)(2) 1992 Series B Bonds. There is hereby authorized for issuance and delivery under this Indenture, for the purpose of financing a portion of the Costs of Construction of certain of the Project Facilities, described in Exhibit A to the Agreement, a Series of 1992 Series B Bonds, entitled to the benefit, protection and security of this Indenture, limited in aggregate principal amount to $19,000,000 (excluding any 1992 Series B Bonds which may be authenticated in exchange for, in substitution for or otherwise in lieu of, other 1992 Series B Bonds pursuant to any provisions of this Indenture). The 1992 Series B Bonds shall be designated by the title "Kenton County Airport Board Special Facilities Revenue Bonds, 1992 Series B (Delta Air Lines, Inc. Project)." The 1992 Series B Bonds shall mature, subject to prior redemption, upon the terms and conditions hereinafter set forth, and shall bear interest to maturity as follows:

Maturity (February 1)	Principal Amount	Interest Rate	Issue Price
2002	$19,000,000	7.250%	100%

(c) Each Bond shall bear interest from and including the Interest Accrual Date immediately preceding the date of authentication thereof, or, if such date of authentication shall be an Interest Accrual Date to which interest on the Bonds has been paid in full or duly provided for on the date of initial authentication of the Bonds, from such date of authentication; Provided, however, that if, as shown by the records of the Registrar, interest on the Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for registration of transfer or exchange shall bear interest from the date to which interest has been paid in full on the Bonds or, if no interest has been paid on the Bonds, from the date of the first authentication of Bonds hereunder.

The Bonds shall bear interest during their respective Interest Rate Periods and be payable, as follows:

(i) For any Weekly Interest Rate Period, interest on the Bonds shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Accrual Date (or, if any Interest Payment Date is not a Wednesday, commencing on the second preceding Interest Accrual Date) and ending on the Tuesday immediately preceding the Interest Payment Date (or, if sooner, the last day of the Weekly Interest Rate Period).

(ii) For any Bond Interest Term within a Short-Term Interest Rate Period or any Long-Term Interest Rate Period, interest on the Bonds shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Accrual Date and ending on the day immediately preceding such Interest Payment Date.

(iii) In any event, interest on the Bonds shall be payable for the final Interest Rate Period to the date on which the Bonds shall have been paid in full or deemed to have been paid in full pursuant to Article VIII of this Indenture. Interest shall be computed, in the case of a Long-Term Interest Rate Period, on the basis of a 360-day year consisting of twelve 30-day months, and in the case of any other Interest Rate Period, on the basis of a 365 or 366-day year, as appropriate, and the actual number of days elapsed.

(d) In the manner hereinafter provided, the term of the Bonds will be divided into consecutive Interest Rate Periods during each of which the Bonds shall bear interest at the Weekly Interest Rate, Bond Interest Term Rates or a Long-Term Interest Rate; provided, however, that at any time, all Bonds shall bear interest at one of a Weekly Interest Rate, a Long-Term Interest Rate or Bond Interest Term Rates and no Bond shall bear interest in excess of fifteen percent (15%) per annum. In the case of the 1992 Series A and B Bonds, the first Interest Rate Period for each maturity shall commence on the Date of Issuance and shall be a Long-Term Interest Rate Period in respect of both the 1992 Series A and Series B Bonds, subject to adjustment to other Interest Rate Periods as herein provided. Upon the Date of Issuance of the Bonds, the initial Bond Interest Term or Bond Interest Terms pertaining to the Bonds and the initial Bond Interest Term Rate or Bond Interest Term Rates borne by the Bonds shall be determined by an officer of the Issuer, subject to the written approval of the Company and the Remarketing Agent.

(e) (i) Determination of Weekly Interest Rate. During each Weekly Interest Rate Period, the Bonds of an applicable Series shall bear interest at the Weekly

Interest Rate, which shall be determined by the Remarketing Agent on Tuesday of each week during such Weekly Interest Rate Period, or if such day shall not be a Business Day, then on the next succeeding Business Day. The first Weekly Interest Rate determined for each Weekly Interest Rate Period shall be determined on or prior to the first day of such Weekly Interest Rate Period and shall apply to the period commencing on the first day of such Weekly Interest Rate Period and ending on the next succeeding Tuesday. Thereafter, each Weekly Interest Rate shall apply to the period commencing on Wednesday and ending on the next succeeding Tuesday, unless such Weekly Interest Rate Period shall end on a day other than Tuesday, in which event the last Weekly Interest Rate for such Weekly Interest Rate Period shall apply to the period commencing on Wednesday preceding the last day of such Weekly Interest Rate Period and ending on the last day of such Weekly Interest Rate Period. The Weekly Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent (based on the examination of tax-exempt obligations comparable in the judgment of the Remarketing Agent to the Bonds and known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions) to be the minimum interest rate, which, if borne by the Bonds, would enable the Remarketing Agent to sell the Bonds on such date of determination at a price (without regarding accrued interest) equal to the principal amount thereof. In the event that the Remarketing Agent fails to establish a Weekly Interest Rate for any week, then the Weekly Interest Rate for such week shall be the same as the Weekly Interest Rate for the immediately preceding week that was determined by the Remarketing Agent. In the

event that the Weekly Interest Rate for the immediately preceding week was not determined by the Remarketing Agent, or in the event that the Weekly Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the interest rate for such week shall be calculated by the Trustee and shall be equal to 75% of the rate on 30-day High-Grade Unsecured Commercial Paper Notes sold through dealers by major corporations as reported in the Wall Street Journal on the day the Weekly Interest Rate would otherwise be determined as provided herein for such Weekly Interest Rate Period.

(ii) Adjustment to Weekly Interest Rate. Subject to Section 2.01(m), at any time, the Company, by written direction to the Issuer, the Trustee, the Registrar, the Tender Agent, the Paying Agent, the Authenticating Agent, the Credit Bank and the Remarketing Agent, may elect, that a Series of Bonds shall bear interest at a Weekly Interest Rate. Such direction of the Company shall specify (1) the Series of Bonds and maturities within such Series and the proposed effective date of such adjustment to a Weekly Interest Rate, which shall be (A) a Business Day not earlier than the 12th day (15th day if the then-current Interest Rate Period shall be a Long-Term Interest Rate Period) following the second Business Day after receipt by the Registrar of such direction, (B) in the case of an adjustment from a Long-Term Interest Rate Period, the day immediately following the last day of the then-current Long-Term Interest Rate Period or a day on which the Bonds would otherwise be subject to optional redemption pursuant to Section 3.01(b) or Section 3.01(c) if such adjustment did not occur, and (C) in the case of an adjustment from a Short-Term Interest

Rate Period, the day immediately following the last day of the Short-Term Interest Rate Period; and (2) the date of delivery for such Bonds to be purchased. In addition, the direction of the Company shall be accompanied by a Favorable Opinion of Bond Counsel and by a form of-notice to be mailed to the Owners of the subject Bonds by the Registrar as provided in Section 2.01(e)(iii). During each Weekly Interest Rate Period commencing on a date so specified and ending on the day immediately preceding the effective date of the next succeeding Interest Rate Period, the interest rate borne by the subject Bonds shall be a Weekly Interest Rate.

(iii) Notice of Adjustment to Weekly Interest Rate. The Registrar shall give notice by first-class mail of an adjustment to a Weekly Interest Rate Period to the affected Owners of a Series of Bonds not less than 12 days (15 days if the then-current Interest Rate Period shall be a Long-Term Interest Rate Period) prior to the effective date of such Weekly Interest Rate Period. Such notice shall state (1) that the interest rate on such Bonds will be adjusted to a Weekly Interest Rate unless Bond Counsel fails to deliver to the Issuer, the Trustee, the Company and the Remarketing Agent a Favorable Opinion of Bond Counsel as to such adjustment on the effective date of such adjustment in the Interest Rate Period, or unless the Company rescinds its election to adjust the interest rate on the subject series of Bonds to a Weekly Interest Rate as provided in Section 2.01(1) hereof, (2) the proposed effective date of such Weekly Interest Rate Period, and (3) that the subject Bonds are subject to mandatory tender for purchase on such effective date, setting forth the applicable purchase price and the place of delivery for purchase of such Bonds.

(f) (i) Determination of Long-Term Interest Rate. During each Long-Term Interest Rate Period, the applicable Series of Bonds shall bear interest at the Long-Term Interest Rate. The Long-Term Interest Rate for any such Series of Bonds shall be determined by the Remarketing Agent on a Business Day no later than the effective date of such Long-Term Interest Rate Period with respect to such Series of Bonds. Except in respect of the initial Long-Term Interest Rates applicable to the 1992 Series A and B Bonds, which shall be as provided in Section 2.01(b)(1) and 2,01(b)(2), the Long-Term Interest Rate for a Series of Bonds shall be the rate of interest per annum determined by the Remarketing Agent (based on the examination of tax-exempt obligations comparable in the judgment of the Remarketing Agent to the Bonds and known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions) to be the minimum interest rate at which the Remarketing Agent will agree to purchase the Bonds of such Series on such effective date for resale at a price (without regarding accrued interest) equal to the principal amount thereof. If, for any reason, the Long-Term Interest Rate is not so determined for any Long-Term Interest Period by the Remarketing Agent on or prior to the first day of such Long-Term Interest Rate Period, then such Series of Bonds shall bear interest at the Weekly Interest Rate as provided in Section 2.01(e) hereof, and shall continue to bear interest at a Weekly Interest Rate determined in accordance with Section 2.01(e) until such time as the interest rate on such Bonds shall have been adjusted to the Bond Interest Term Rates or a Long-Term Interest Rate as provided herein, as the case may be, and such Bonds shall be subject to

mandatory purchase upon notice from the Owners thereof as described in Section 2.02(a) hereof.

(ii) Adjustment to or Continuation of Long-Term Interest Rate.

(A) Subject to Section 2.01(m), at any time, the Company, by written direction to the Issuer, the Trustee, the Registrar, the Tender Agent, the Paying Agent, the Authenticating Agent, the Credit Bank and the Remarketing Agent, may elect that a Series of Bonds and its maturities shall bear, or continue to bear, interest at a Long-Term Interest Rate or Rates. In the event that the Company shall elect that a Series of Bonds shall bear interest at a Long-Term Interest Rate, the direction of the Company required by the first sentence of this paragraph (A), (1) shall specify the Series of Bonds and the duration of the Long-Term Interest Rate Period or Periods during which such Bonds shall bear interest at such Long-Term Interest Rate or Rates, (2) shall specify the effective date of each such Long-Term Interest Rate Period, which date shall be (aa) a Business Day not earlier than the 30th day following the second Business Day after receipt by the Registrar of such direction, (bb) in the case of an adjustment from a Long-Term Interest Rate Period to another Long-Term Interest Rate Period, the day immediately following the last day of the then-current Long-Term Interest Rate Period with respect to such Bonds or a day on which such Bonds would otherwise be subject to optional redemption pursuant to Section 3.01(b) or (c) if such adjustment did not occur and (cc) in the case of an adjustment from a Short-Term Interest Rate Period, the day immediately following the last day of the Short-Term Interest Rate Period with respect to such Bonds; (3) shall specify the last day of such

Long-Term Interest Rate Period (which last day shall be either the day immediately prior to the maturity date of such Bonds, or a day which both immediately precedes a Business Day and is at least 271 days after the effective date thereof); (4) shall specify a date or dates on or prior to which Owners are required to deliver such Bonds to be purchased; and (5) with respect to any such Long-Term Interest Rate Period, may specify redemption prices greater, and redemption periods longer, than those set forth in Section 3.01(b) or (c), if approved by Bond Counsel as provided in Section 2.01(f)(ii)(B).

(B) Such direction of the Company shall be accompanied by a Favorable Opinion of Bond Counsel and by a form of the notice to be mailed by the Registrar to the Owners of the Bonds of such Series as provided in Section 2.01(f)(iii). During the Long-Term Interest Rate Period commencing and ending on the dates so determined and during each successive Long-Term Interest Rate Period, if any, so determined, the interest rate borne by such Bonds shall be a Long-Term Interest Rate.

(C) If, by the second Business Day preceding the 29th day prior to the last day of any Long-Term Interest Rate Period the Registrar shall not have received notice of the Company's election that, during the next succeeding Interest Rate Period the Bonds shall bear interest at a Weekly Interest Rate or a Long-Term Interest Rate, or at Bond Interest Term Rates, the next succeeding Interest Rate Period shall be a Weekly Interest Rate Period until such time as the interest rate on such Bonds shall be adjusted to a Long-Term Interest Rate or Bond Interest Term Rates as provided in this Section 2.01.

(D) Upon any adjustment from any Interest Rate Period for a series of Bonds to a Long-Term Interest Rate Period, the Credit Facility or similar credit device, if any, then in effect shall automatically terminate and/or be delivered by the Trustee to the related Credit Bank for cancellation.

(E) In the event that the Company shall deliver to the Registrar, the Remarketing Agent, the Tender Agent and the Trustee on or prior to the date that the interest rate for any Long-Term Interest Rate Period is determined a notice to the effect that the Company elects to rescind its election to have the relevant Series of Bonds bear interest at a Long-Term Interest Rate, then the interest rate on such Bonds shall not be adjusted to a Long-Term Interest Rate, and such Bonds shall bear interest at a Weekly Interest Rate or Bond Interest Term Rates for Bond Interest Terms as the case may be as in effect prior to such event, or if such Bonds were to be adjusted from a Long-Term Interest Rate, then such Bonds shall bear interest at a Weekly Interest Rate for the period commencing on the date which would have been the effective date of such Long-Term Interest Rate Period, and the Bonds shall continue to be subject to mandatory purchase as provided in Section 2.02 on the date which would have been the effective date of such Long-Term Interest Rate Period.

(iii) Notice of Adjustment to or Continuation of Long-Term Interest Rate. The Registrar for the applicable Series of Bonds shall give notice by first-class mail of an adjustment to a (or the establishment of another) Long-Term Interest Rate Period to the Owners of such Series of Bonds not less than 30 days prior to the effective date of such Long-Term Interest Rate Period. Such notice shall state: (1) the Series of

Bonds and maturity or maturities thereof and that the interest rate on such Bonds shall be adjusted to, or continue to be, a Long-Term Interest Rate unless (x) Bond Counsel fails to deliver to the Issuer, the Trustee, the Company and the Remarketing Agent a Favorable Opinion of Bond Counsel as to such adjustment in the Interest Rate Period on the effective date of such adjustment, or (y) the Company shall elect, on or prior to 10:00 A.M. on the effective date of such adjustment to rescind its election to cause the adjustment of the interest rate on such Series of Bonds to a Long-Term Interest Rate as provided in Section 2.01(m); (2) the proposed effective date and the last day of such Long-Term Interest Rate Period; and (3) that such Series of Bonds are subject to mandatory tender for purchase on such effective date, the purchase price applicable thereto and the place of delivery for purchase of such Bonds.

(iv) Adjustment from Long-Term Interest Rate Period. In addition to an adjustment from a Long-Term Interest Rate Period on the date immediately following the last day of the Long-Term Interest Rate Period for the Bonds of a Series, at any time during a Long-Term Interest Rate Period (subject to the provisions set forth in this paragraph (iv)), the Company may elect, by written direction to the Issuer, the Trustee, the Registrar, the Paying Agent, the Authenticating Agent, the Credit Bank and the Remarketing Agent for Bonds of a Series, subject to Section 2.01(m), that such Bonds no longer shall bear interest at a Long-Term Interest Rate and shall instead bear interest at a Weekly Interest Rate, Bond Interest Term Rates or a new Long-Term Interest Rate, as specified in such election. In the notice of such election, the Company shall also specify the effective date of the new Interest Rate Period for the

Bonds of a Series, which date shall be (1) a Business Day no earlier than the 15th day after the second Business Day following the date of receipt by the Registrar of the notice of election from the Company or, in the case of adjustment to a new Long-Term Interest Rate Period, the 30th day after the second Business Day following the date of receipt by the Registrar of such notice, and (2) a day on which such Bonds will be subject to optional redemption in accordance with Section 3.01(b) or (c). Such Bonds of such Series shall be subject to mandatory tender for purchase on the effective date of the new Interest Rate Period thereof, in accordance with Section 2.02(c), at a purchase price equal to the optional redemption price set forth in Section 3.01(b) or (c) which would be applicable on that date.

(g) (i) Determination of Bond Interest Terms and Bond Interest Term Rates.

(A) During each Short-Term Interest Rate Period with respect to Bonds of a Series, each Bond of such Series shall bear interest during each Bond Interest Term for such Bond at the Bond Interest Term Rate for such Bond. The Bond Interest Term and the Bond Interest Term Rate for each Bond of such Series need not be the same for any two Bonds of such Series, even if determined on the same date. Each of such Bond Interest Terms and Bond Interest Term Rates for each Bond of such Series shall be determined by the Remarketing Agent for such Bonds no later than the first day of each Bond Interest Term. Except for any Bond of such Series purchased on behalf of the Company and remaining unsold by the Remarketing Agent at the close of business on the first day of the Bond Interest Term, each Bond Interest Term shall be for a period of days within the range or ranges

announced as possible Bond Interest Terms no later than 9:00 a.m., New York City time, on the first day of each Bond Interest Term by the Remarketing Agent for such Bonds. Each Bond Interest Term for each Bond of such Series shall be a period of not more than 270 days, determined by the Remarketing Agent for such Bonds to be the period which, together with all other Bond Interest Terms for all Bonds of such Series then Outstanding, will result in the lowest overall interest expense on the Bonds of such Series over the next succeeding 270 days. Any Bond of such Series purchased on behalf of the Company and remaining unsold by the Remarketing Agent as of the close of business on the first day of the Bond Interest Term for that Bond shall have a Bond Interest Term of one day or, if that Bond Interest Term would not end on a day immediately preceding a Business Day, a Bond Interest Term ending on the day immediately preceding the next Business Day. Each Bond Interest Term shall end on either a day which immediately precedes a Business Day or on the day immediately preceding the maturity date for the related Series of Bonds. If for any reason a Bond Interest Term for any Bond of such Series cannot be so determined by the Remarketing Agent, or if the determination of such Bond Interest Term is held by a court of law to be invalid or unenforceable, then such Bond Interest Term shall be 30 days, but if the last day so determined shall not be a day immediately preceding a Business Day, shall end on the first day immediately preceding the Business Day next succeeding such last day, or if such last day would be after the day immediately preceding the maturity date for Bonds of such Series, shall end on the day immediately preceding the maturity date. In determining the number of days in each Bond Interest Term, the Remarketing

Agent shall take into account the following factors: (I) existing short-term tax-exempt market rates and indices of such short-term rates, (II) the existing market supply and demand for short-term tax-exempt securities, (III) existing yield curves for short-term and long-term tax-exempt securities for obligations of credit quality comparable to the Bonds of such Series, (IV) general economic conditions, (V) industry economic and financial conditions that may affect or be relevant to the Bonds of such Series, (VI) the Bond Interest Terms of other Bonds of such Series and (VII) such other facts, circumstances and conditions pertaining to financial markets as the Remarketing Agent, in its sole discretion, shall determine to be relevant.

(B) The Bond Interest Term Rate for each Bond Interest Term for each Bond of a Series in a Short-Term Interest Rate Period shall be the rate of interest per annum determined by the Remarketing Agent (based on the examination of tax-exempt obligations comparable in the judgment of the Remarketing Agent to the Bonds of such Series and known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions) to be the minimum interest rate which, if borne by such Bond, would enable the Remarketing Agent to sell such Bond on the date and at the time of such determination at a price (without regard to accrued interest) equal to the principal amount thereof. If for any reason a Bond Interest Term Rate for any Bond of a Series in a Short-Term Interest Rate Period is not so established by the Remarketing Agent for any Bond Interest Term, or such Bond Interest Term Rate is determined by a court of law to be invalid or unenforceable, then the Bond Interest Term Rate for such Bond Interest Term shall be the rate per annum

equal to 70% of the interest rate on 30-day High-Grade Unsecured Commercial Paper Notes sold through dealers by major corporations as reported by the Wall Street Journal on the first day of such Bond Interest Term and which maturity most nearly equals the Bond Interest Term for which a Bond Interest Term Rate is being calculated.

(ii) Adjustment to Bond Interest Term Rates. Subject to Section 2.01(m), at any time, the Company, by written direction to the Issuer, the Trustee, the Credit Bank, the Registrar, the Tender Agent, the Authenticating Agent, the Paying Agent and the Remarketing Agent for Bonds of a Series, may elect that such Bonds shall bear interest at Bond Interest Term Rates. Such direction of the Company shall specify (1) the effective date of the Short Term Interest Rate Period (during which such Bonds shall bear interest at Bond Interest Term Rates), which shall be (A) a Business Day not earlier than the 12th day (15th day if the then-current Interest Rate Period shall be a Long-Term Interest Rate Period) following the second Business Day after receipt by the Registrar of such direction, (B) in the case of an adjustment from .a Long-Term Interest Rate Period, the day immediately following the last day of the then-current Long-Term Interest Rate Period or a day on which such Bonds would otherwise be subject to optional redemption pursuant to Section 3.01(b) or (c) if such adjustment did not occur; Provided that, if prior to the Company's making such election any Bonds of such Series shall have been called for redemption and such redemption shall not have theretofore been effected, the effective date of such Short-Term Interest Rate Period shall not precede such redemption date, and (C) in the case of an adjustment from a Weekly Interest Rate Period, the

day immediately following the last day of such Interest Rate Period with respect to such Bonds; (2) the date of delivery of such Bonds to be purchased. In addition, the direction of the Company shall be accompanied by a Favorable Opinion of Bond Counsel and a form of the notice to be mailed by the Registrar to the Owners of such Bonds as provided in Section 2.01(g)(iii). During each Short-Term Interest Rate Period for the Bonds of a Series commencing on the date so specified and ending, with respect to each such Bond on the day immediately preceding the effective date of the next succeeding Interest Rate Period with respect to such Bond, each such Bond shall bear interest at a Bond Interest Term Rate during each Bond Interest Term for such Bond.

(iii) Notice of Adjustment to Bond Interest Term Rates. The Registrar for the Bonds of a Series shall give notice by first-class mail of an adjustment to a Short-Term Interest Rate Period to the Owners of the Bonds of such Series not less than 12 days (15 days if the then-current Interest Rate Period shall be a Long-Term Interest Rate Period) prior to the effective date of such Short-Term Interest Rate Period. Such notice shall state (1) the Series of Bonds and that the Bonds of such Series shall bear interest at Bond Interest Term Rates unless Bond Counsel fails to deliver to the Issuer, the Trustee, the Company and the Remarketing Agent a Favorable Opinion of Bond Counsel as to such adjustment on the effective date of such adjustment in the Interest Rate Period or unless the Company rescinds its election to adjust the interest rate on such Bonds to Bond Interest Term Rates as provided in Section 2.01(m), in which case such Bonds, if being adjusted from a Weekly Interest Rate Period, shall continue to bear interest at a Weekly Interest Rate as in effect immediately prior to such

proposed adjustment in the Interest Rate Period, or if such Bonds are being adjusted from a Long-Term Interest Rate Period, the Bonds shall be adjusted to bear interest at a Weekly Interest Rate, (2) the proposed effective date of such Short-Term Interest Rate Period, and (3) that the Bonds of said Series are subject to mandatory tender for purchase on the proposed effective date of such Short-Term Interest Rate Period, setting forth the applicable purchase price and the place of delivery for purchase of the Bonds.

(iv) AdJustment from Short-Term Interest Rate Period.

Subject to Section 2.01(m), at any time during a Short-Term Interest Rate Period with respect to the Bonds of a Series, the Company may elect, pursuant to Section 2.01(e)(ii) or 2.01(f)(ii), that such Bonds no longer shall bear interest at Bond Interest Term Rates and shall instead bear interest at a Weekly Interest Rate or a Long-Term Interest Rate; as specified in such election.

The date on which all Bond Interest Terms determined shall end shall be the last day of the then-current Short-Term Interest Rate Period and the day next succeeding such date shall be the effective date of the Weekly Interest Rate Period or Long-Term Interest Rate Period elected by the Company.

(h) The determination of the Weekly Interest Rate and Long-Term Interest Rate and each Bond Interest Term Rate by the Remarketing Agent shall be conclusive and binding upon the Remarketing Agent, the Trustee, the Registrar, the Tender Agent, the Authenticating Agent, the Issuer, the Company, the Paying Agent, the Credit Bank and the Owners of the affected Series of Bonds.

(i) The face of the Bonds of any Series, the reverse of the Bonds of such Series, the certificate of authentication to be executed on all the Bonds of such Series by the Registrar or the Authenticating Agent and the forms for registration of transfer shall be in substantially the forms thereof set forth in Exhibit A hereto, with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture.

(j) The Bonds shall be deliverable as fully registered Bonds without coupons in Authorized Denominations. The Bonds of each Series shall be numbered from R-1 consecutively upwards in order of authentication and each Bond shall be dated its date of authentication.

(k) Principal of and any premium on the Bonds shall be payable, in such coin or currency of the United States of America as, at the respective time of payment, shall be legal tender for the payment of public and private debts, to the Owners of the Bonds upon presentation and surrender of such Bonds at the Principal Office of the Paying Agent. Interest on the Bonds shall be payable on each Interest Payment Date by the Paying Agent during any Weekly Interest Rate Period or Long-Term Interest Rate Period, by check mailed on the date on which due to the Owners of the Bonds at the close of business on the Record Date in respect of such Interest Payment Date at the registered addresses of Owners as shall appear on the registration books maintained pursuant to Section 2.08. In the case of (i) Bonds bearing interest at a Bond Interest Term Rate, or (ii) any Owner of Bonds bearing interest at other than a Bond Interest Term Rate in an aggregate principal amount in excess of $1,000,000 as shown on the reg-

istration books kept by the Registrar who, prior to the Record Date next preceding any Interest Payment Date, shall have provided the Paying Agent with wire transfer instructions, principal of and premium, if any and interest payable on such Bonds shall be paid in accordance with the wire transfer instructions provided by the Owner of such Bond (or by the Remarketing Agent on behalf of such Owner); provided, however, that during any Short-Term Interest Rate Period, interest on any Bond shall be payable only upon presentation of such Bond to the Tender Agent at its principal office for delivery of Bonds.

If and to the extent, however, that the Issuer fails to make payment or provision for payment of interest on any Bond on any Interest Payment Date, interest shall continue to accrue thereon but shall cease to be payable to the Owner of that Bond as of the applicable Record Date. When moneys become available for payment of the interest, (a) the Trustee shall, pursuant to Section 9.10, establish a Special Record Date for the payment of that interest which shall not be more than 15 nor fewer than 10 days prior to the date of the proposed payment, and (b) the Trustee shall give notice by first-class mail of the proposed payment and of the Special Record Date to each Owner not fewer than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Owners of the Bonds as of the Special Record Date. The form of such notice shall be provided to the Trustee by the Company.

(l) In the event that the Company shall elect to convert the interest rate on a Series of Bonds to a Weekly Interest Rate, Bond Interest Term Rates or Long-Term Interest Rate as provided in Sections

2.01(e)(ii), 2.01(f)(ii) or 2.01(g)(ii) then the written direction furnished by the Company to the Issuer, the Trustee, the Credit Bank, the Registrar, the Tender Agent, the Authenticating Agent and the Remarketing Agent as required by such sections shall be made by registered or certified mail, or by telex or telecopy, confirmed by registered or certified mail. Any such direction of the Company shall specify whether the Bonds of such Series are to bear interest at the Weekly Interest Rate, Bond Interest Term Rates or the Long-Term Interest Rate and shall be accompanied by a copy of the notice required to be given by the Registrar pursuant to Section 2.01(e)(iii), 2.01 (f)(iii), or 2.01(g)(iii), as the case may be.

(m) Notwithstanding anything in this Section 2.01, in connection with any adjustment of the Interest Rate Period on the Bonds of a Series, the Company (if such election is not rescinded by the Company as provided in the next succeeding sentence) shall cause a Favorable Opinion of Bond Counsel to be provided to the Issuer, the Trustee, the Company and the Remarketing Agent for such Bonds on the effective date of such adjustment. The Company shall have the right to deliver to the Trustee and the Registrar, Remarketing Agent, Tender Agent, Paying Agent, Authenticating Agent and Credit Bank for the Bonds of a Series on or prior to 10:00 a.m., New York City time, on the effective date of any such adjustment of an Interest Rate Period a notice to the effect that the Company elects to rescind its election to make such adjustment. In the event that Bond Counsel fails to deliver a Favorable Opinion of Bond Counsel on the effective date of such adjustment or the Company rescinds its election to make such adjustment as provided above, then the Interest Rate Period on the Bonds of such Series shall not be adjusted, and such

Bonds shall continue to bear interest at a Weekly Interest Rate or Bond Interest Term Rates, as the case may be, as in effect immediately prior to such proposed adjustment in the Interest Rate Period; provided, however, that in the event the Bonds of a Series are being adjusted from a Long-Term Interest Rate Period and Bond Counsel fails to deliver such Favorable Opinion of Bond Counsel on the effective date of such adjustment as provided above or the Company elects to rescind its election to make such adjustment, then such Bonds shall nevertheless be adjusted to bear interest at a Weekly Interest Rate as provided in Section 2.01(e)(ii) on the date which would have been the effective date of such Long-Term Interest Rate Period. In any event, if notice of such adjustment has been mailed to the Owners of the Bonds of such Series as provided in this Section 2.01 and Bond Counsel fails to deliver a Favorable Opinion of Bond Counsel on the effective date or the Company rescinds its election to make such adjustment as herein described, such Bonds shall continue to be subject to mandatory tender for purchase on the date which would have been the effective date of such adjustment as provided in Section 2.02. In addition to the other requirements of this Section 2.01, in order for the Company to adjust the Interest Rate Period for the Bonds of a Series to a Weekly Interest Rate Period or a Short-Term Interest Rate Period, the Company must appoint a Remarketing Agent and a Tender Agent for such Bonds (and such Remarketing Agent and Tender Agent must accept such appointment) in accordance with Article XIII and the Company must convert from a book-entry-only system if such system would not be practical, in the sole judgment of the Company, dur-

ing any Weekly Interest Rate Period or Short-Term Interest Rate Period.

SECTION 2.02. Purchase of Bonds

(a) (i) During Weekly Interest Rate Period. During any Weekly Interest Rate Period for the Bonds of a Series, any Bond of such Series shall be purchased (in whole) from its Owner at the option of the Owner on any Business Day at a purchase price equal to the principal amount thereof plus accrued interest, if any, from and including the Interest Accrual Date immediately preceding the date of purchase through and including the day immediately preceding the date of purchase, unless the date of purchase shall be an Interest Accrual Date, in which case at a purchase price equal to the principal amount thereof, payable by wire transfer in immediately available funds, upon delivery to the Tender Agent at its Principal Office for delivery of notices of an irrevocable written notice which states the principal amount of such Bond and the date on which the same shall be purchased, which date shall be a Business Day not prior to the seventh day next succeeding the date of the delivery of such notice to the Tender Agent. Any notice delivered to the Tender Agent after 4:00 p.m., New York City time, shall be deemed to have been received on the next succeeding Business Day. For payment of such purchase price on the date specified in such notice, such Bond must be delivered, at or prior to 10:00 a.m., New York City time, on the date specified in such notice, to the Tender Agent at its Principal Office for the delivery of Bonds, accompanied by an instrument of transfer thereof, in form satisfactory to the Tender Agent, executed in blank by the Owner thereof or his duly-authorized attorney, with such signature guaranteed by a commercial bank, trust

company or member firm of the New York Stock Exchange. In the case of Bonds then in Book-Entry Only System format, DTC shall deliver to the Tender Agent such documentation and information as required by the Tender Agent.

(a) (ii) During any Weekly Interest Rate Period for which the book-entry-only-system described in Section 2.15 hereof with respect to the Bonds of a Series is in effect, any Bond or portion thereof then bearing interest at a Weekly Interest Rate shall be purchased or deemed purchased as provided in Section 2.02(a) on the date specified in the notice referred to below at a purchase price equal to the principal amount thereof, plus accrued interest, if any, to the date of purchase, upon delivery on any Business Day by a direct participant of DTC for such Bond to the Tender Agent and to the Remarketing Agent of an irrevocable written notice, executed by such direct participant and stating the principal amount of such Bond, the portion thereof to be purchased and the date on which the same shall be purchased, which date shall be a Business Day at least seven days after the date of the delivery of such notice to the Tender Agent. Upon confirmation by DTC to the Tender Agent that such direct participant referred to in the preceding sentence has an ownership interest in the Bonds at least equal to the amount of Bonds specified in such irrevocable written notice, payment of the purchase price of such Bond shall be made by 10:00 a.m. (New York City time), or as soon as possible thereafter upon the receipt of remarketing proceeds or receipt by the Tender Agent of the proceeds of any drawing on the Credit Facility, on the Business Day specified in the notice upon the transfer, on the registration books of DTC, of the beneficial ownership interests in such Bonds tendered for purchase to the account of

the Tender Agent, or a direct participant acting on behalf of such Tender Agent, at or prior to 10:00 a.m. (New York City time) on the date specified in such notice.

(b) Mandatory Tender for Purchase on Day Next Succeeding the Last Day of Each Bond Interest Term. On the day next succeeding the last day of each Bond Interest Term for a Bond of a Series in a Short-Term Interest Rate Period, unless such day is the first day of a new Interest Rate Period (in which event such Bond shall be subject to mandatory purchase pursuant to Section 2.02(c)), such Bond shall be purchased from its Owner at a purchase price equal to the principal amount thereof payable in immediately available funds, if such Bond is delivered to the Tender Agent on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., on the next succeeding Business Day. The purchase price of any Bond so purchased shall be payable only upon surrender of such Bond to the Tender Agent for such Bond at its Principal Office for delivery of Bonds, accompanied by an instrument of transfer thereof, in form satisfactory to the Tender Agent, executed in blank by the Owner thereof or his duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

(c) Mandatory Tender for Purchase on First Day of Each Interest Rate Period. The Bonds of a Series shall be subject to mandatory tender for purchase on the first day of each Interest Rate Period, or on the day which would have been the first day of an Interest Rate Period had one of the events specified in Section 2.01(m) not occurred which resulted in the interest rate on such Bonds not being adjusted, at a

purchase price, payable in immediately available funds, equal to the principal amount of. such Bonds plus accrued interest, if any or, in the case of a purchase on the first day of an Interest Rate Period for such Bonds which shall be preceded by a Long-Term Interest Rate Period and which shall commence prior to the day originally established as the last day of such preceding Long-Term Interest Rate Period, at a purchase price equal to the optional redemption price set forth in Section 3.01(b) or (c) which would have been applicable to such Bonds on such date if such preceding Long-Term Interest Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

(d) Mandatory Tender for Purchase upon Termination; Expiration, Reduction, Modification or Replacement of the Credit Facility. If at any time the Registrar for the Bonds of a Series secured by a Credit Facility shall give notice in accordance with Section 4.13 that any Bond or Bonds of such Series payable from the Credit Facility as then in effect shall on the date specified in such notice cease to be payable from such Credit Facility as a result of (1) the termination or expiration of the term of such Credit Facility, (2) the occurrence of an event of default under the Reimbursement Agreement or (3) such Credit Facility being reduced, replaced or modified with the effect that such Bond or Bonds of such Series are no longer payable from such Credit Facility (in each case, whether or not any Alternate Letter of Credit or Alternate Credit Facility has been obtained), or the amount of coverage with respect thereto has been reduced or will not be reinstated following a draw on the Credit Facility with respect to interest on the Bonds of such Series, then (but only in the circumstance where the Letter of Credit has not been

renewed or replaced by an Alternate Letter of Credit issued and delivered in accordance with Section 4.11(a) at least 45 days prior to such termination, expiration, reduction or modification) on the fifth (5th) day preceding any termination, expiration, reduction or modification of the Credit Facility, or, in the case of the failure of the Credit Bank to reinstate the amount payable on the Credit Facility as to interest within the time permitted thereby, a Business Day not less than ten days but not more than fifteen days after the Credit Bank shall have failed to reinstate the amount payable on the Credit Facility with respect to interest, each such Bond or Bonds of such Series shall be purchased or deemed purchased as herein provided. The purchase price for such Bonds shall be equal to the principal amount of such Bonds plus accrued interest plus redemption premium (if any).

Payment of the purchase price of any such Bond shall be made in immediately available funds by 4:00 p.m., New York City time, on such purchase date upon delivery of such Bond to the Tender Agent at its Principal Office for delivery of Bonds, accompanied by an instrument of transfer thereof, in form satisfactory to the Tender Agent, executed in blank by the Owner thereof with the signature of such Owner guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange, at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in the notice of such expiration or termination of the Credit Facility delivered pursuant to Section 4.13, or, if no such date shall have been so specified, on the fifth (5th) Business Day preceding such expiration, termination, reduction or modification of the Credit Facility. In the event that, as a result of any such expiration, termi-

nation, replacement, reduction or modification of the Credit Facility, any such Bond is no longer payable from the Credit Facility, the Tender Agent for such Bond (upon receipt from the Owner thereof in exchange for payment of the purchase price thereof) shall present such Bond to the Registrar for notation thereon of any distinguishing mark required to be included thereon at the request of any rating agency then rating such Bonds or at the request of the Company.

Notwithstanding anything in this Section 2.02(d) to the contrary, in the event that in connection with any reduction of the amounts payable under the Credit Facility, the Company shall deliver to the Trustee, the Tender Agent, the Remarketing Agent and the Registrar, prior to the date that notice of such reduction is given by the Registrar as provided in Section 4.13, written evidence from Moody's, if such Bonds are then rated by Moody's, and S&P, if such Bonds are then rated by S&P, to the effect that such reduction, in and of itself, will not result in the withdrawal or reduction of the rating(s) then applicable to such Bonds and a Favorable Opinion of Bond Counsel, then such Bonds shall not be subject to mandatory tender for purchase as provided in this Section 2.02(d) as a result of such reduction and notice thereof shall not be given to the Owners of such Bonds pursuant to Section 2.02(e).

(e) Notice of Mandatory Tender for Purchase.

In connection with any mandatory tender for purchase of a Series of Bonds in accordance with Sections 2.02(b), 2.02(c) or 2.02(d), the Registrar for such Bonds shall give the notice provided herein as a part of the notice given pursuant to Sections 2.01(e)(iii), 2.01(f)(iii) and 2.01(g)(iii) or 4.13. Such notice shall

state (A) that the purchase price of any Bond so subject to mandatory tender for purchase shall be payable only upon surrender of such Bond to the Tender Agent for such Bond at its Principal Office for delivery of Bonds, accompanied by an instrument of transfer thereof, in form satisfactory to the Tender Agent, executed in blank by the Owner thereof or his duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange; (B) that all Bonds so subject to mandatory tender for purchase shall be purchased on the mandatory purchase date; and (C) that in the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Tender Agent for purchase on such mandatory purchase date, then such Bond shall be deemed to be an Undelivered Bond, and that no interest shall accrue thereon on and after such mandatory purchase date and that the Owner thereof shall have no rights under the Indenture other than to receive payment of the purchase price thereof.

(f) Irrevocable Notice Deemed to be Tender of Bond; Undelivered Bonds.

(i) The giving of notice by an Owner of a Bond as provided in Section 2.02(a), shall constitute the irrevocable tender for purchase of each such Bond with respect to which such notice shall have been given, regardless of whether such Bond is delivered to the Tender Agent for purchase on the relevant purchase date as provided in Section 2.02.

(ii) The Tender Agent for the Bonds of, a Series may refuse to accept delivery of any such Bonds for which a proper instrument of transfer has not been provided; such refusal, however, shall not affect the

validity of the purchase of such Bond as herein described. If any Owner of a Bond who shall have given notice of tender of purchase pursuant to Section 2.02(a) or any Owner of a Bond subject to mandatory tender for purchase pursuant to Sections 2.02(b), 2.02(c) or 2.02(d) shall fail to deliver such Bond properly endorsed to the Tender Agent for such Bond at the place and on the applicable date and at the time specified, such Bond shall constitute an Undelivered Bond. If funds in the amount of the purchase price of the Undelivered Bond are available for payment to the Owner thereof on the date and at the time specified, from and after the date and time of that required delivery, (1) the Undelivered Bond shall be deemed to be purchased and shall no longer be deemed to be Outstanding under this Indenture; (2) interest shall no longer accrue thereon; and (3) funds in the amount of the purchase price of the Undelivered Bond shall be held by the Tender Agent for the benefit of the Owner thereof, to be paid on delivery (and proper endorsement) of the Undelivered Bond to the Tender Agent at its Principal Office for delivery of Bonds. Any funds held by the Tender Agent as described in clause (3) of the preceding sentence shall be held uninvested.

SECTION 2.03. Execution of Bonds. The Bonds shall be executed on behalf of the Issuer by the reproduced facsimile signature of the Chairman of the Issuer and shall have affixed, impressed or reproduced thereon the reproduced facsimile of the corporate seal of the Issuer which shall be attested by the reproduced facsimile signature of the Secretary-Treasurer of the Issuer or, in the case of Bonds subject to the Book-Entry Only System, may be manually executed and sealed. Each of the foregoing officers of the Issuer may execute or attest or cause to be executed or

attested the Bonds with a facsimile signature in lieu of his manual signature and any such facsimile signature shall have the same force and effect as if such officer had manually signed the Bonds.

In case any officer of the Issuer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the authentication and delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery; and any Bond may be signed on behalf of the Issuer by such persons as, at the time of execution of such Bond, shall be the proper officers of the Issuer, even though at the date of such Bond or of the execution and delivery of this Indenture any such person was not such officer.

SECTION 2.04. Authentication of Bonds. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar or the Authenticating Agent shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar or the Authenticating Agent, and such executed certificate of the. Registrar or the Authenticating Agent upon any such Bonds shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The certificate of authentication on any Bond shall be deemed to have been executed by the Registrar or the Authenticating Agent if manually signed by an authorized officer or employee on behalf of the Registrar or the Authenticating Agent, but it shall not be necessary that the same person sign the

certificate of authentication on all of the Bonds issued hereunder. The Registrar or the Authenticating Agent that authenticates a Bond shall also insert thereon the date of such authentication and such Registrar or Authenticating Agent shall also complete any such Bond by inserting on the face thereof any information required to be inserted thereon regarding the type and length of Interest Rate Period, the interest rate, any date on which the Bonds are subject to mandatory tender for purchase and any Interest Payment Date.

SECTION 2.05. Bonds Not General Obligations. The Bonds shall not constitute a debt, liability or obligation or pledge of the faith and credit of the Issuer, Kenton County, Kentucky, or the Commonwealth on any political subdivision thereof within the meaning of any constitutional or statutory provision whatsoever, but shall be limited and special obligations of the Issuer, payable solely from the Trust Estate. The Bonds shall not be payable from or charged upon any funds other than the Trust Estate pledged to the payment thereof, nor shall the Issuer be subject to any pecuniary liability thereon. No holder or holders of the Bonds shall ever have the right to compel any exercise of the taxing power of the Issuer or any other unit of government to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the Issuer; nor shall such Bonds constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer. The statutory mortgage lien provided for by KRS 103.250(1) is hereby waived by the Issuer and the Trustee and shall not be applicable to the Project Facilities or constitute security for the payment of the 1992 Series A or B Bonds.

SECTION 2.06. Prerequisites to Authentication of Bonds. The Issuer shall execute and deliver to the Registrar or the Authenticating Agent and the Registrar or the Authenticating Agent shall authenticate the Bonds and deliver the Bonds of a Series to the initial purchasers thereof as hereinafter directed in this Section.

Prior to the delivery on the Date of Issuance by the Registrar or the Authenticating Agent of any authenticated Bonds of a Series, there shall be or have been delivered to the Trustee:

(a) a certified copy of the Bond Resolution of the Issuer authorizing the issuance of the Bonds and the execution, delivery and performance of this Indenture and the Agreement;

(b) original executed counterparts of the Agreement, this Indenture and the Ground Lease;

(c) the executed Letter of Credit, if such Series of Bonds is secured by the Letter of Credit;

(d) an executed certificate of the Chairman or Vice Chairman of the Issuer as to the reasonable expectations of the Issuer as of the Date of Issuance with respect to the amount and use of the proceeds of the Bonds of such Series;

(e) a request and authorization to the Registrar or the Authenticating Agent on behalf of the Issuer to authenticate and deliver the Bonds of such Series to the purchaser or purchasers therein identified upon payment to the Trustee, but for the account of the Issuer, of sums to be specified in such request and authorization plus accrued interest on the Bonds, if any, to the Date of Issuance; and

(f) a written statement on behalf of the Company, executed by an Authorized Company Representative (i) consenting to the issuance and delivery of the Bonds of such Series, and (ii) consenting to each and every provision of this Indenture; provided, however, that the execution and delivery of the Agreement on behalf of the Company by any such officer shall be deemed to be such written statement of consent.

SECTION 2.07. Lost, Destroyed or Improperly Cancelled Bonds. If any Bond shall be lost (whether by reason of theft or otherwise), destroyed in whole or in part (whether by mutilation, damage or otherwise), or improperly cancelled, the Issuer may execute and the Registrar or the Authenticating Agent may authenticate a new Bond of like date and denomination and bearing a number not contemporaneously outstanding; provided that, (a) in the case of any Bond destroyed in part, such Bond shall first be surrendered to the Registrar or the Authenticating Agent and (b) in the case of any lost Bond or Bond destroyed in whole or in part, there shall be first furnished to the Issuer, the Trustee, the Registrar, the Authenticating Agent, the Paying Agent and the Company evidence of such loss or destruction, together with indemnity satisfactory to each of them. In the event any lost, destroyed or improperly cancelled Bond shall have matured or is about to mature, or has been called for redemption, instead of issuing a substitute Bond the Issuer may, in its discretion, pay the same without surrender thereof if there shall be first furnished to the Issuer, the Trustee, the Registrar, the Paying Agent, the Authenticating Agent and the Company evidence of such loss, destruction or cancellation, together with indemnity, satisfactory to each of them. Upon the issuance of any substitute Bond, the Issuer, the Registrar, the Paying

Agent, the Authenticating Agent and the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto. The Registrar and the Authenticating Agent may charge the Owner of any such Bond with their reasonable fees and expenses in connection with any transaction described in this Section.

Every substitute Bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, destroyed or improperly cancelled shall constitute an additional contractual obligation of the Issuer and the Company, whether or not the lost, destroyed or improperly cancelled Bond shall be at any time enforceable, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of lost, destroyed or improperly cancelled Bonds, notwithstanding any law or statute now existing or hereafter enacted.

SECTION 2.08. Registration, Registration of Transfer and Exchange of Bonds. The Registrar shall maintain and keep, at its Principal Office, books for the registration and books for the registration of transfer of Bonds. At reasonable times and under reasonable regulations established by the Registrar, the books for the registration and books for the registration of transfer of Bonds may be inspected and copied by the Issuer, the Trustee or the Company. Upon the written request of Owners (or a designated representative thereof) of 25% or more in principal amount of the Bonds then Outstanding, the Regi-

strar, upon being satisfactorily indemnified with respect to expenses, will mail to the Owners of all Bonds then Outstanding any notice provided to the Trustee by such Owners.

The transfer of any Bond shall be registered upon the registration books of the Registrar, upon surrender thereof at the Principal Office of the Registrar or the Authenticating Agent, together with a written instrument of transfer satisfactory to the Registrar or the Authenticating Agent duly executed by the Owner or his duly-authorized attorney or, in the case of an Undelivered Bond, at the direction of the Tender Agent. Upon the registration or transfer of any Bond or Bonds, the Issuer shall issue in the name of the transferee, in an Authorized Denomination, and the Registrar or Authenticating Agent shall authenticate and deliver, a new Bond or Bonds of the same series and in the same aggregate principal amount as the surrendered Bond or Bonds.

The Issuer, the Company, the Trustee, the Registrar, the Tender Agent, the Paying Agent, the Authenticating Agent and the Remarketing Agent may deem and treat the Owner of any Bond as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest and any premium on, or the purchase price of, such Bond and for all other purposes, and neither the Issuer, the Trustee, the Registrar, the Tender Agent, the Paying Agent, the Authenticating Agent nor the Remarketing Agent shall be affected by any notice to the contrary. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Upon surrender thereof at the Principal Office of the Registrar or the Authenticating Agent, Bonds, at the option of the owner thereof, may be exchanged for an equal aggregate principal amount of Bonds of the same series and of any Authorized Denomination.

In all cases in which the privilege of exchanging Bonds or registering the transfer of Bonds is exercised, the Issuer shall execute and the Registrar or the Authenticating Agent shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. For every such exchange or registration of transfer of Bonds, whether temporary or definitive, the Issuer, the Registrar, the Authenticating Agent or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, which sum or sums shall be paid by the person requesting such exchange or registration of transfer as a condition precedent to the exercise of the privilege of making such exchange or registration of transfer. Except in connection with the purchase of Bonds pursuant to Section 2.02, the Registrar or the Authenticating Agent shall not be obligated to make any exchange or registration of transfer of Bonds during the 15 days immediately preceding the date of the first mailing of notice of any proposed optional redemption of Bonds, nor shall the Registrar or the Authenticating Agent be required to make any exchange or registration of transfer of any Bonds called for redemption pursuant to Section 3.01. The Registrar shall, as soon as practicable after registration of transfer, provide copies of any notice of redemption applicable to any Bond transferred after the date of mailing of such notice of redemption to the new Owner of such Bond.

SECTION 2.09. Other Obligations. The Issuer expressly reserves the right to issue, to the extent permitted by law, obligations under another indenture or indentures to provide additional funds for the benefit of the Company or to refund all or any principal amount of the Bonds of any Series or of any bonds previously issued by the Issuer for the benefit of the Company.

SECTION 2.10. Additional Bonds. Subsequent to the issuance of the 1992 Series A and B Bonds hereunder, the Issuer, but only upon the written request of and the written approval of the Company, may at any time and from time to time issue and deliver hereunder and secure hereby at one time or from time to time one or more additional Series of Bonds (herein defined and referred to as "Additional Bonds") by means of a Supplemental Indenture or Supplemental Indentures for the purposes of (i) completing the Project Facilities, (ii) financing the acquisition and construction of additions, expansions and improvements to the Project Facilities or additional facilities at the Airport for use by the Company or (iii) for the purposes described in Section 2.11. Such Supplemental Indenture or Supplemental Indentures shall become effective upon compliance with the provisions of this Section 2.10 and Article 12 and the following conditions:

(1) The issuance of the Additional Bonds shall be authorized by law and issued pursuant to a Supplemental Indenture in accordance with this Section 2.10, Article 12 and the Act;

(2) The Issuer shall have found and determined that no default exists in the payment of the principal of or interest and premium (if any) on, or mandatory redemptions (if any) of, any Bonds;

(3) (i) The Agreement shall not have been terminated and shall be in full force and effect and no event of default shall have occurred thereunder which shall not have theretofore been cured or waived; (ii) the initial term of the Agreement shall be for a period extending at least to the final maturity date of all Bonds to be Outstanding upon the issuance of such Additional Bonds, or the Agreement shall have been amended in such manner that the then current term thereof shall be for a period extending at least to the final maturity date of all Bonds to be Outstanding upon the issuance of such Additional Bonds (provided, however, that no such Agreement term, as adjusted, shall exceed the period prescribed by Section 142 (b)(1)(B) of the Code); (iii) the Agreement shall contain, or be amended to contain, provisions including in the Facility Rentals payable thereunder an amount equal to the principal of or purchase price of, if appropriate, and premium, if any, and interest on all Bonds to be Outstanding upon the issuance of such Additional Bonds; and (iv) there shall have been delivered to the Issuer and the Trustee an opinion of Bond Counsel substantially to the effect that the Agreement, as amended, is the valid and binding agreement of the parties thereto and contains provisions that comply with clauses (ii) and (iii) of this subparagraph;

(4) There shall be filed with the Issuer and the Trustee an opinion of Bond Counsel or a ruling of the Internal Revenue Service to the effect that the issuance and sale of such Additional Bonds will not have an adverse effect on the exclusion of interest on the 1992 Series A and B Bonds or any Additional Bonds theretofore issued from the gross income of the owners thereof for federal income tax purposes.

Each Series of Additional Bonds shall be issued under and pursuant to a Supplemental Indenture or Supplemental Indentures and the provisions of Article XII shall have been fulfilled with respect to such Supplemental Indenture or Supplemental Indentures; and such Supplemental Indenture or Supplemental Indentures shall designate such Additional Bonds issued thereunder as a separate series and specify: (a) the authorized principal amount of such series of Additional Bonds; (b) the purpose or purposes for which the Additional Bonds are being issued; (c) the date, the maturity date or dates and the Interest Payment Dates of the Additional Bonds; (d) the interest rate or rates per annum to be borne by the Additional Bonds or the manner of determining such rates; (e) the denominations and manner of numbering the Additional Bonds; (f) the terms and conditions, if any, for the redemption (by sinking fund or otherwise) or purchase of the Additional Bonds; the redemption premiums or purchase premiums, if any, to be paid upon the redemption or purchase of the Additional Bonds; and the period or periods, if any, during which such premiums shall be payable; (g) if the Additional Bonds are to be payable as to principal and redemption premium, if any, at a place or places in addition to the principal office of the Registrar and Paying Agent, the other place or places of payment; (h) the provisions for the sale or other disposition of the Additional Bonds and the use, application, and investment, if any, of the proceeds of such sale or other disposition and which use, application and investment shall not be inconsistent or in conflict with the provisions of this Indenture; (i) the provisions for the execution, and the manner of authentication, if any, of the Additional Bonds; (j) the Tender Agent, Tender Agreement, Remarketing

Agent and Remarketing Agreement, if any, and the Registrar, Paying Agent and Authenticating Agent; and (k) any other provisions not inconsistent or in conflict with the provisions of the Indenture deemed necessary or advisable by the Issuer and the Trustee.

SECTION 2.11. Refunding Bonds. The Issuer may at any time and from time to time, but only upon the written request and approval of the Company, issue one or more additional Series of Bonds (herein defined and referred to as "Refunding Bonds") by means of a Supplemental Indenture adopted in compliance with the provisions of Sections 2.10 and Article XII hereof, for the purpose of refunding all or any portion of one or more Series of the then Outstanding Bonds or of bonds previously issued by the Issuer for the benefit of the Company.

Bonds of any one or more Series may be refunded by the same Series of Refunding Bonds, which Bonds to be refunded shall be specified in the Supplemental Indenture providing for the issuance of the Refunding Bonds, and the principal amount of such Refunding Bonds may include amounts necessary to pay the principal of the Bonds to be refunded, interest thereon to the date of redemption thereof, any premium payable thereon upon such redemption and the costs of issuance of such Refunding Bonds. The proceeds of a Series of Refunding Bonds which are to be used to refund all or any portion of one or more Series of Outstanding Bonds shall be held and applied in such manner, consistent with the provisions of Article VIII, as is provided in the Supplemental Indenture providing for the issuance of such Refunding Bonds, so that upon the delivery of such Refunding Bonds the Bonds to be refunded thereby

shall no longer be deemed to be Outstanding hereunder in accordance with the provisions of Article VIII.

SECTION 2.12. Temporary Bonds. Pending the preparation of definitive Bonds, the Issuer may execute and the Registrar or the Authenticating Agent shall authenticate and deliver temporary Bonds. Temporary Bonds shall be issuable as fully registered Bonds, of any Authorized Denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the Issuer. Temporary Bonds may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Issuer and be authenticated by the Registrar or Authenticating Agent upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable, the Issuer shall execute and shall furnish definitive Bonds and thereupon temporary Bonds may be surrendered in exchange therefor without charge at the Principal Office of the Registrar or Authenticating Agent, and the Registrar or Authenticating Agent shall authenticate and deliver in exchange for such temporary Bonds a like aggregate principal amount of definitive Bonds of Authorized Denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds.

SECTION 2.13. Cancellation of Bonds. All Bonds which shall have been surrendered to the Paying Agent for payment or redemption, and all Bonds which shall have been surrendered to the Registrar for exchange or registration of transfer, shall be cancelled by the Paying Agent or the Registrar (such

Bonds cancelled by the Paying Agent to be forwarded to the Registrar) and notice thereof given to the Trustee by the Registrar. All Bonds delivered to or acquired by the Registrar for cancellation shall be cancelled (if not previously cancelled by the Paying Agent) by the Registrar and returned to the Trustee for destruction. The Trustee shall furnish to the Issuer, the Registrar, the Paying Agent, the Authenticating Agent, the Trustee and the Company counterparts of certificates evidencing such cancellation and destruction and specifying such Bonds by number.

SECTION 2.14. Purchase of Additional Bonds. The Additional Bonds of a Series shall be subject to purchase at the option of the Owners thereof and mandatory purchase to the extent, upon such terms and conditions, on such dates, and at such prices as are set forth in the Supplemental Indenture providing for the issuance of such Series of Bonds.

SECTION 2.15. Book-Entry-Only System. The definitive 1992 Series A and B Bonds initially issued shall be issued in the form of a separate single fully registered 1992 Series A Bond and 1992 Series B Bond for each of the maturities of each such Series and may be issued in typewritten form, in which case references in Exhibit A to the face or reverse of the 1992 Series A and B Bonds shall be inapplicable. Upon the Date of Issuance of the 1992 Series A and B Bonds, the ownership of each of the 1992 Series A and B Bonds shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 2.16, all of the 1992 Series A and B Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Subject to Section 2.16, purchasers of beneficial ownership of the 1992 Series A and B Bonds will not receive 1992 Series A and B Bonds

from the Trustee or the Authenticating Agent for the 1992 Series A and B Bonds evidencing their ownership interest.

With respect to 1992 Series A and B Bonds registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any DTC Participant, any DTC Indirect Participant or to any person on behalf of whom such DTC Participant or DTC Indirect Participant holds an interest in the 1992 Series A and B Bonds. The Issuer, the Trustee and the Paying Agent and Registrar for the 1992 Series A and B Bonds shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant or DTC Indirect Participant with respect to any ownership interest in the 1992 Series A and B Bonds, (ii) delivery to any DTC Participant, any DTC Indirect Participant or any other person, other than the owner of a 1992 Series A or B Bond, as shown in the registration books maintained by the Registrar for the 1992 Series A and .B Bonds, of any notice with respect to the 1992 Series A or B Bonds, including any notice of redemption, tender notice or any other notice required under this Indenture, or (iii) the payment to any DTC Participant, any DTC Indirect Participant or any other person, other than the registered owner of a 1992 Series A or B Bond, as shown in the registration books maintained by the Registrar for the 1992 Series A and B Bonds, of any amount with respect to principal of, redemption premium, if any, or interest on the 1992 Series A and/or B Bonds. Notwithstanding any other provision of this Indenture to the contrary, the Issuer, the Trustee and the Paying Agent and Registrar for the 1992 Series A and B Bonds shall be entitled to treat and consider the person in whose name each 1992

Series A and/or B Bond is registered in the registration books maintained by the Registrar for the 1992 Series A and B Bonds as the owner of such 1992 Series A and/or B Bond for the purpose of payment of principal of, redemption premium, if any, and interest on the 1992 Series A and B Bonds, for the purpose of registering transfers with respect to the 1992 Series A and B Bonds, voting such 1992 Series A and B Bonds and all other purposes whatsoever. The Paying Agent shall pay all 1992 Series A and B Bonds only to or upon the order of the respective owners, as shown in the registration books maintained by the Registrar for the 1992 Series A and B Bonds as provided in this Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the payment of the principal of, redemption premium, if any, and interest on the 1992 Series A and B Bonds to the extent of the sum or sums so paid. So long as all 1992 Series A and B Bonds are registered in the name of Cede & Co., as nominee of DTC, no person other than the registered owner of a 1992 Series A and B Bond, as shown in the registration books maintained by the Registrar for the 1992 Series A and B Bonds, shall receive a 1992 Series A and/or B Bond evidencing the obligation of the Issuer to make payment of amounts due pursuant to this Indenture. Upon delivery by DTC to the Trustee and the Registrar and Paying Agent for the 1992 Series A and B Bonds of written notice to the effect that DTC has determined to substitute a new nominee in the place of Cede & Co., and subject to the provisions of this Indenture with respect to interest checks or drafts being mailed to the registered owner as of the close of business on the Record Date, the words "Cede

& Co." in this Indenture shall refer to such nominee of DTC. "DTC Participant," as used in this Section and in Sections 2.16 and 2.17, means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants. "DTC Indirect Participant," as used in this Section and in Section 2.17, means banks, brokers, dealers and trust companies that clear through, or maintain a custodian relationship with, a DTC Participant, either directly or indirectly. The provisions related to a book-entry-only system of registration for the 1992 Series A and B Bonds contained in this Section and in Sections 2.16 and 2.17 may be adopted under a Supplemental Indenture for use with respect to any Series of Bonds.

SECTION 2.16. Successor Securities Depository; Transfer Outside Book-Entry-Only System. DTC may determine to discontinue providing its services with respect to the 1992 Series A and B Bonds at any time by giving reasonable notice to the Issuer, the Registrar and the Company and discharging its responsibilities with respect thereto under applicable law. Under such circumstances, or (i) in the event the Company desires to use a similar book-entry system with another securities depository (reasonably acceptable to the Registrar and the Trustee and qualified to act as such under Section 17A of the Securities Exchange Act of 1934, as amended) or (ii) the Company determines to discontinue participation in the system of book-entry transfer through DTC, at any time by giving reasonable notice to DTC. Whenever DTC or the Company, as the case may be, requests the Issuer and the Registrar to do so, the Registrar and the Issuer will cooperate with DTC or

the Company, as the case may be, in taking appropriate action to make available one or more separate certitificates evidencing the 1992 Series A and B Bonds to any DTC Participant having 1992 Series A or B Bonds credited to its DTC account or the Registrar and the Issuer will cooperate with the Company in taking appropriate action to qualify the 1992 Series A and B Bonds with another securities depository. In such event, the 1992 Series A and B Bonds shall no longer be restricted to being registered in the registration books maintained by the Registrar for the 1992 Series A and B Bonds in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names owners of the 1992 Series A and B Bonds transferring or exchanging 1992 Series A and B Bonds shall designate, in accordance with the provisions of this Indenture. All references herein to DTC or Cede & Co. shall thereafter refer to such depository or its nominee. In addition, the Company, upon reasonable prior written notice to DTC, may elect to have the Issuer issue 1992 Series A and B Bonds to registered owners other than DTC or a successor securities depository. The 1992 Series A and B Bonds shall thereupon no longer be restricted to being registered in the name of Cede & Co., but may be registered in the names of the owners thereof as shall be provided by DTC or a DTC Participant, and subsequently in whatever name or names owners of the 1992 Series A and B Bonds shall designate.

SECTION 2.17. Payments to Cede & Co. Notwithstanding any other provision of this Indenture to the contrary, so long as all 1992 Series A and B Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal and

purchase price of, redemption premium, if any, and interest on the 1992 Series A and B Bonds, and all notices with respect to such 1992 Series A and B Bonds, shall be made and given by the Paying Agent for the 1992 Series A and B Bonds and the Trustee to DTC as provided herein and by DTC to its DTC Participants or DTC Indirect Participants and the beneficial owners of the 1992 Series A and B Bonds in the manner provided in the representation letter of the Issuer to DTC delivered on the Date of Issuance of the 1992 Series A and B Bonds.

(End of Article II)

ARTICLE III
REDEMPTION

SECTION 3.01. Redemption Provisions for the Bonds. The Bonds shall be subject to redemption prior to maturity in accordance with the provisions of the proceedings of the Issuer authorizing the Bonds. The 1992 Series A Bonds and 1992 Series B Bonds shall be subject to redemption prior to maturity as follows:

(a) (i) On any Interest Payment Date during a Weekly Interest Rate Period, the 1992 Series A and B Bonds shall be subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at a redemption price of par; and

(ii) On the day succeeding the last day of any Bond Interest Term with respect to any 1992 Series A or B Bond, such 1992 Series A or B Bond shall be subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at a redemption price of par.

(b) (i) During the Long-Term Interest Rate Period commencing on the Date of Issuance of the 1992 Series A Bonds, the 1992 Series A Bonds shall be subject to optional redemption as follows:

(A) The 1992 Series A Bonds maturing on February 1, 2002 are not subject to optional redemption prior to maturity.

(B) The 1992 Series A Bonds maturing on February 1, 2012, are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1 2002, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices

(expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount
February 1, 2002 to January 31, 2003	102%
February 1, 2003 to January 31, 2004	101
February 1, 2004 and thereafter	100

(C) The 1992 Series A Bonds maturing on February 1, 2020 are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1 2002, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices (expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount
February 1, 2002 to January 31, 2003	102%
February 1, 2003 to January 31, 2004	101
February 1, 2004 and thereafter	100

(D) The 1992 Series A Bonds maturing on February 1, 2021 are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1 2002, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices (expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount
February 1, 2002 to January 31, 2003	102%
February 1, 2003 to January 31, 2004	101
February 1, 2004 and thereafter	100

(E) The 1992 Series A Bonds maturing on February 1, 2022 are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1 2002, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption price of 100% of the principal amount thereof, plus accrued interest, if any, to the date fixed for redemption.

(b) (ii) During the Long-Term Interest Rate Period commencing on the Date of Issuance of the 1992 Series B Bonds, the 1992 Series B Bonds shall be subject to optional redemption as follows:

The 1992 Series B Bonds maturing on February 1, 2022 are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1, 2002, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices (expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount
February 1, 2002 to January 31, 2003	102%
February 1, 2003 to January 31, 2004	101
February 1, 2004 and thereafter	100

(c) During any Long-Term Interest Rate Period the 1992 Series A and B Bonds (except during the Long-Term Interest Rate Period for the 1992 Series A and B Bonds commencing on the Date of Issuance of the 1992 Series A and B Bonds) shall be subject to optional redemption by the Issuer, at the direction of the Company, on the first day thereof, in whole or in part, at the redemption price of par, and thereafter, during the periods specified below or, if a Favorable Opinion of Bond Counsel is delivered as provided in Section 2.01(f)(ii)(B), during the periods specified in the notice of the Company to the Registrar pursuant to Section 2.01(f)(ii)(A), in whole at any time or in

part from time to time, at the redemption prices (expressed as a percentage of principal amount) hereinafter indicated or specified in the notice of the Company to the Registrar pursuant to Section 2.01(f)(ii)(A), plus accrued interest, if any, to the redemption date.

Length of Long-Term Interest Rate Period (expressed in years)	Redemption Prices
greater than 15	after 10 years at 102%, declining by 1% every year to 100%
less than or equal to 15 and greater than 10	after 7 years at 102%, declining by 1% every year to 100%
less than or equal to 10 and greater than 7	after 5 years at 102%, declining by 1% every year to 100%
less than or equal to 7 and greater than 4	after 3 years at 101%, declining by 1% every year to 100%
less than or equal to 4	after 2 years at 100%,

(d) The 1992 Series A and B Bonds shall be subject to extraordinary optional redemption by the Issuer, at the direction of the Company, in whole or in part at any time at a redemption price of par plus accrued interest, if any, to the redemption date, if the Company shall deliver to the Trustee a certificate of an Authorized Company Representative certifying that:

(i) The Company shall have determined, in its sole discretion, that the continued operation of one or more of the Project Facilities or a substantial portion of one or more of the Project Facilities is impractical, uneconomical or undesirable for any reason, includ-

ing, without limitation, the imposition upon the Company with respect thereto of unreasonable burdens or excessive liabilities, which shall be deemed to include, without limitation, the imposition or substantial increase of ad valorem property taxes or taxes on the leasing or use of the Project Facilities or a substantial portion thereof or on amounts payable with respect thereto; or

(ii) All or a substantial portion of one or more of the Project Facilities shall have been damaged, destroyed, condemned or taken by eminent domain or sold under a reasonably apprehended threat of condemnation or such portion of one or more of the Project Facilities or the use or control thereof shall have been condemned or taken by eminent domain or sold under a reasonably apprehended threat of condemnation as to render the Project Facilities or a substantial portion of one or more of the Project Facilities unsatisfactory for their intended uses, as determined by the Company in its sole discretion; or

(iii) the construction or operation of one or more of the Project Facilities or a substantial portion of one or more of the Project Facilities shall have been enjoined or prevented or shall have otherwise been prohibited by, or shall conflict with, any order, decree, rule or regulation of any court or of any federal, state or local regulatory body, administrative agency or other governmental body. To exercise any such option with respect to all or a portion of the 1992 Series A and B Bonds, the Company shall give written notice to the Trustee, which notice shall specify the Project Facilities affected by the above specified events and the principal amount of Bonds of such Series to be redeemed, including the maturity or maturities of the 1992 Series A and B Bonds to be

redeemed. Such notice shall also specify a redemption date, which date may not be earlier than 30 days after such notice is given, and shall further specify that, as determined by the Company, one or more of such events has occurred or one or more of such conditions is continuing, which determination shall be conclusive.

(e) The 1992 Series A and/or B Bonds shall be subject to mandatory redemption by the Issuer, in whole, or in such part as will, in the opinion of Bond Counsel, preserve the exclusion from gross income for federal income tax purposes of the interest on the 1992 Series A and/or B Bonds remaining Outstanding, or either of such Series, at a redemption price of par, plus accrued interest, if any, to the redemption date, on the 180th day (or such earlier date as may be designated by the Company) after a Determination of Taxability (provided however, that if the lien of this Indenture has been defeased prior to a Determination of Taxability, the 1992 Series A and/or Series B Bonds will not be subject to redemption, except for any redemption provided for in connection with such defeasance.

(f) The 1992 Series A and B Bonds, or an appropriate allocable portion thereof, shall be redeemed by the Issuer at a redemption price equal to 100% of the principal amount thereof, without redemption premium, plus accrued interest, if any, to the redemption date, within 60 days (i) following the automatic termination of the Agreement as to the Project Facilities located on a site covered by any ground lease as a result of the termination of such ground lease in accordance with its terms, or (ii) following the failure by the Company, at any time during which any 1992 Series A or B Bonds are outstanding, to exercise any

option to renew the term of the Agreement as to the Project Facilities, or portion thereof, then existing and leased under the Agreement on the applicable term expiration date subsequent to the expiration of the initial term thereof, which initial term expires on December 31, 2015.

(g) Any Series of Additional Bonds shall be subject to any mandatory sinking fund redemptions provided in the Supplemental Indenture providing for the issuance of such Series of Additional Bonds.

(h) Any Series of Additional Bends shall be subject to any optional redemptions provided in the Supplemental Indenture providing for the issuance of such Series of Additional Bonds.

SECTION 3.02. Selection of Bonds. to be Redeemed. If less than all the Bonds of a Series shall be called for redemption under any provision of this Indenture permitting a partial redemption, the particular Bonds or portions of Bonds of a Series to be redeemed shall be selected by the Registrar, in such manner as the Registrar in its discretion may deem proper, in the principal amount designated to the Registrar by an Authorized Company Representative or otherwise as required by this Indenture; provided, however that in connection with any redemption of Bonds, the Registrar shall first select for redemption any Escrow Bonds, and that if, as indicated in a certificate of an Authorized Company Representative delivered to the Registrar, the Company shall have offered to purchase all Bonds then Outstanding of a Series and less than all of such Bonds shall have been tendered to the Company for such purchase, the Registrar, at the direction of an Authorized Company Representative, shall select for redemption all such Bonds of a Series which have not been so tendered. In addition, if dur-

ing a Short-Term Interest Rate Period less than all of the Bonds of a Series shall be called for redemption under any provision of this Indenture permitting a partial redemption of the Bonds, such partial redemption shall be accomplished by the Registrar designating specific Bonds of such Series for redemption on their respective Interest Payment Dates. The Bonds of a Series designated for redemption during a Short-Term Interest Rate Period shall be selected by the Registrar in such manner as the Registrar in its discretion may deem proper only from those Bonds of such Series whose Bond Interest Term is of sufficient remaining duration as to allow timely notification of redemption to be given pursuant to Section 3.03 hereof.

In selecting Bonds of a Series or of a maturity for redemption, the Registrar shall treat each Bond of such Series or maturity as representing that number of Bonds of such Series or maturity which is obtained by dividing the principal amount of such Bond by the then-minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Owner of such Bond shall forthwith surrender such Bond to the Paying Agent for (a) payment to such Owner of the redemption price of the unit or units of principal amount called for redemption, and (b) delivery to such Owner of a new Bond or Bonds in the aggregate principal amount of the unredeemed balance of the principal amount of such Bond. New Bonds of such Series or maturity representing the unredeemed balance of the principal amount of such Bond shall be issued to the Owner thereof, without charge therefor. If the Owner of any such Bond shall fail to present such Bond to the Paying Agent for payment and

exchange as aforesaid, such Bond nevertheless shall become due and payable on the date fixed for redemption to the extent of the unit or units of principal amount called for redemption (and to that extent only) and interest thereon shall cease to accrue.

Any notice of redemption given in accordance with this Article III, unless moneys (Available Moneys in the case of any Bonds secured by a Credit Facility) shall be received by the Trustee prior to giving such notice sufficient to pay the principal of and premium, if any, and accrued interest, if any, on the Bonds to be redeemed, shall state that such redemption shall be conditional upon the receipt of such moneys (Available Moneys in the case of any Bonds secured by a Credit Facility) by the Trustee by 12:00 Noon, New York City time, on the date fixed for redemption. If such moneys (Available Moneys in the case of any Bonds secured by a Credit Facility) shall not have been so received such notice shall be of no force and effect, the Issuer shall not redeem such Bonds and the Registrar shall give notice, in the manner in which the notice of redemption was given, that such moneys (Available Moneys in the case of any Bonds secured by a Credit Facility) were not so received and such redemption did not take place. In such event, the Registrar and Trustee shall promptly return the Bonds which it has received to the holders thereof as shown on registration books of the Issuer.

SECTION 3.03. Procedure for Redemption of Bonds. Upon being notified by the Company at least five (5) Business Days prior to the day on which the Registrar for the Bonds of a Series shall be requited to give notice of any redemption as provided in the Agreement, such Registrar shall give notice, in the name of the Issuer, of the redemption of such Series

of Bonds, which notice shall (i) specify the complete official name of the issue, including the Series designation, the CUSIP number, the interest rate, the date of issue, the maturity date or dates therein to be redeemed, the redemption date, the redemption price and the place where amounts due upon such redemption will be payable (which shall be the principal office of the Paying Agent for such Series of Bonds and if less than all of the Bonds of such Series and/or maturity date or dates are to be redeemed, the numbers of the Bonds of such Series and the portions of such Bonds (in units of Authorized Denominations only) so to be redeemed, and (ii) state that, on the redemption date, the Bonds to be redeemed (or portions thereof) shall cease to bear interest. Such notice may set forth any additional information relating to such redemption. Any notice required to be given by the Registrar for the Bonds of a Series pursuant to this Section shall be provided to the Registrar by the Company. Such notice shall be given by first-class mail (except that if an Owner owns $1,000,000 or more in aggregate principal amount of such Bonds such notice shall be given by certified mail, return receipt requested) at least 30 days prior to the date fixed for redemption to the Owners of Bonds of such Series to be redeemed at the address for each such Owner of Bonds as shown in the registration books kept by such Registrar; provided, however, the failure to duly give such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds of such series with respect to which no such failure or defect occurred. In addition, notice of redemption shall be sent by certified mail, return receipt requested, contemporaneously with such mailing to Securities Depositories that are Owners of Bonds to be redeemed (provided, that if

any such Securities Depository is also an Owner of $1,000,000 or more in aggregate principal amount of such Bonds then only one such notice by certified mail, return receipt requested, need be given) and to two or more Information Services. A second notice of redemption shall be given by registered or certified mail, return receipt requested, mailed not less than sixty (60) days nor more than ninety (90) days after the redemption date to any Owner of Bonds to be redeemed that has not surrendered the Bonds called for redemption, at his address shown on the registration books of the Issuer maintained by such Registrar. Records of the Registrar showing that such notice was mailed as required by this Section shall be conclusive evidence of the giving of such notice. Upon presentation and surrender of Bonds of a Series so called for redemption at the place or places of payment, such Bonds shall be redeemed.

The term "Information Services" shall mean Financial Information, Inc.'s "Daily Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenney Information Services' "Called Bond Service," 55 Broad Street, 28th Floor, New York, New York 10004; Moody's "Municipal and Government," 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; and Standard and Poor's "Called Bond Record," 25 Broadway, 3rd Floor, New York, New York 10004; or, in accordance with then-current guidelines of the Securities and Exchange Commission, to such other addresses and/or such other services providing information with respect to called bonds, as the Company may designate in a certificate of the Company delivered to the Trustee. The Company may also designate that the term "Information Services" means no such service.

The term "Securities Depositories" shall mean: The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax (516) 227-4039 or 4190; Midwest Securities Trust Company, Capital Structures-Call Notification, 440 South LaSalle Street, Chicago, Illinois 60605, Fax (312) 663-2343; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention: Bond Department, Dex (215) 496-5058; or, in accordance with then-current guidelines of the Securities and Exchange Commission, to such other addresses and/or such other securities depositories, as the Company may designate in a certificate of the Company delivered to the Trustee. The Company may also designate that the term "Securities Depositories" means no such depositories.

SECTION 3.04. No Partial Redemption After Default. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default, there shall be no redemption of less than all of the Outstanding Bonds unless, in the opinion of Bond Counsel, such partial redemption is required in order that a Determination of Taxability (or an event which would give rise thereto) shall not occur, or if a Determination of Taxability has occurred, that such partial redemption shall result in such Determination of Taxability being rescinded as to the Bonds remaining Outstanding.

SECTION 3.05. Payment of Redemption Price.

(a) For the redemption of any of the Bonds of a Series, the Issuer shall cause to be deposited in the Bond Fund, on or prior to the date fixed for redemption, solely out of the Trust Estate, moneys (Available Moneys in the case of any Bonds secured by a Credit Facility) sufficient to pay the principal of and interest

and any premium to become due on the date fixed for such redemption of such Bonds.

(b) Moneys for payment of the principal of and interest and any premium to the date fixed for redemption on Bonds of a Series called for redemption and not presented for payment on the date fixed for redemption shall be set aside by the Trustee in trust for the Owners of such Bonds and shall be held uninvested. Interest on such Bonds shall cease to accrue on the date fixed for redemption.

SECTION 3.06. Company Right to Cancel Bonds. The Company shall have the right at any time, and from time to time, to deliver Bonds owned by the Company (including Escrow Bonds) to the Trustee for cancellation. Prior to any such cancellation, the Company shall deliver to the Trustee a certificate of the Company stating that the Company is the owner of such Bonds and irrevocably directing the Trustee to cancel such Bonds. Upon the delivery of such Bonds to the Trustee, together with such Certificate, such Bonds shall no longer be deemed to be Outstanding under this Indenture or have any right hereunder, and shall be cancelled by the Trustee.

SECTION 3.07. Redemption of Additional Bonds. The Additional Bonds of a Series shall be subject to redemption prior to their stated maturities to the extent, upon such terms and conditions, on such dates, and at such prices as are set forth in the Supplemental Indenture providing for the issuance of such Series of Bonds and upon the further terms and conditions as are hereinafter set forth in this Article III.

SECTION 3.08. Selection of Additional Bonds for Redemption; Selection by Lot. In the event that less than all of the Additional Bonds of any particular Series then Outstanding are to be redeemed, the

Additional Bonds of such Series to be redeemed shall be redeemed in such order as is set forth in the Supplemental Indenture providing for the issuance of such Series. Whenever provision is made in this Indenture or any Supplemental Indenture for the selection by lot of Bonds to be redeemed, the Trustee, in any manner which it deems fair, shall select, or shall direct the Registrar to select, the particular Bonds to be redeemed from among those Bonds which are then subject to redemption and to selection by lot for such redemption. The Registrar for the Bonds of the Series subject to redemption shall promptly notify the Trustee, in writing, of the numbers of the Bonds of the Bonds so selected for redemption.

SECTION 3.09. Partial Redemption of Bonds. In the event that only part of the principal amount of a Bond of a Series shall be called for redemption, payment of the amount to be redeemed shall be made, except to the extent otherwise provided in a Supplemental Indenture with respect to an Additional Series of Bonds, only upon surrender of such Bond to the Registrar for such Series, as indicated in the notice of redemption of such Bond. Upon surrender of such Bond, except to the extent otherwise provided in a Supplemental Indenture with respect to an Additional Series of Bonds, the Registrar shall authenticate and deliver to the Owner thereof, at the expense of the Company, a new duly executed Bond or Bonds, of Authorized Denominations equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of such surrendered Bond.

SECTION 3.10. Effect of Redemption. (a) If a Bond of a Series is subject by its terms to prior redemption and has been duly called for redemption and notice of

the redemption thereof has been duly given as provided herein or in the Supplemental Indenture providing for the issuance of such Series of Bonds and if moneys for the payment of such Bond (or of the principal amount thereof to be redeemed) at the then applicable redemption price, together with the then applicable premium, if any, and the interest to accrue to the redemption date on such Bond (or the principal amount thereof to be redeemed) are held for the purpose of such payment by the Registrar for the Series of Bonds of which such bond is one, then such Bond (or the principal amount thereof to be redeemed) so called for redemption shall, on the redemption date designated in such notice, become due and payable, and interest on such Bond (or the principal amount thereof to be redeemed) so called for redemption shall cease to accrue.

(b) During the period from and after the date on which a notice of redemption shall be given by the Registrar in accordance with the provisions of Section 3.03 and continuing through the redemption date designated in such notice of redemption, the holders of the Bonds to which such notice of redemption relates shall, to the extent the Bonds may be tendered at the option of the owners thereof, continue to have the right to tender such Bonds for optional or mandatory purchase and such Bonds shall continue to be secured by the Credit Facility, if any, in effect immediately prior to the date on which such notice of redemption shall have been given, or an Alternate Letter of Credit or Alternate Credit Facility replacing any such Credit Facility, as if such notice of redemption shall not have been given.

(End of Article III)

ARTICLE IV

CERTAIN FUNDS; LETTER OF CREDIT; ALTERNATE CREDIT FACILITIES

SECTION 4.01. Creation of Bond Fund. There is hereby created and established with the Trustee a trust fund in the name of the Issuer to be designated "Special Facilities Revenue Bonds (Delta Air Lines, Inc. Project) Bond Fund" to be held and administered by the Trustee hereunder so long as any Bonds are Outstanding and separate accounts within said Bond Fund designated as the "Special Facilities Revenue Bonds, 1992 Series A (Delta Air Lines, Inc. Project) Bond Account (the "1992 Series A Bond Account") and the "Special Facilities Revenue Bonds, 1992 Series B (Delta Air Lines, Inc. Project) Bond Account (the "1992 Series B Bond Account") shall be created and maintained. The Trustee shall establish one or more additional accounts or subaccounts within the Bond Fund for any purpose, including in connection with the issuance of Additional Bonds.

SECTION 4.02. Liens. The Issuer shall not create any lien upon the Bond Fund or upon the Receipts and Revenues other than the lien hereby created. The Issuer shall have no interest in the Bond Fund or the moneys or Investment Securities therein.

SECTION 4.03. Deposits into Bond Fund. There shall be deposited in the Bond Fund:

(a) the accrued interest and purchase premium, if any, paid by the initial purchasers of a Series of Bonds;

(b) all Facility Rentals except moneys received to pay the purchase price of Bonds being purchased

pursuant to Section 2.02 which shall be deposited as provided in Article XIII;

(c) all other moneys received by the Trustee under and pursuant to any provision of the Agreement, or any similar agreement executed and delivered in respect of Series of Additional Bonds other than Sections 6.09 and 6.10 and 8.05 thereof, or from any other source when accompanied by directions by the Company that such moneys are to be paid into the Bond Fund; and

(d) all moneys received pursuant to the Letter of Credit or other Credit Facility except moneys received to pay the purchase price of Bonds being purchased pursuant to Section 2.02, which shall be deposited as provided in Article XIII; and (e) all moneys received by the Trustee under Section 5.01 hereof for deposit into the Bond Fund. All moneys deposited to the Bond Fund as provided in Section 4.03(d) shall be held in a separate account or sub-account separate and apart from all other moneys in the Bond Fund and such moneys shall only be available to make payments hereunder with respect to the related Series of Bonds and to such extent, Bonds are not equally and ratably secured hereunder. Nothing herein shall prevent the Issuer from affording any particular Series of Additional Bonds additional or different security through a Letter of Credit, Alternate Letter of Credit, Credit Facility or Alternate Credit Facility (which may or may not be similar or identical to the Letter of Credit, if any, or other Credit Facility, if any, from time to time securing a Series of Bonds) or by providing no such Credit Facility, or by the establishment of separate funds and accounts with respect to a particular Series of Additional Bonds, or otherwise.

SECTION 4.04. Use of Moneys in Bond Fund. Except as otherwise provided in Sections 4.05, 4.06, 4.08, 4.10, 6.01, 8.01 and 10.04, moneys in the Bond Fund shall be used solely for the payment of the principal of and interest and any redemption premium on the Bonds as the same shall become due and payable at maturity, upon redemption or acceleration or otherwise.

SECTION 4.05. Custody of Bond Fund: Withdrawal of Moneys. (a) The Bond Fund shall be held in the custody of the Trustee but in the name of the Issuer and the Issuer hereby authorizes and directs the Trustee to withdraw from the Bond Fund and furnish to the Paying Agent moneys (Available Moneys in the case of Bonds secured by a Credit Facility as to which Available Moneys may be required) sufficient to pay the principal of and interest and any premium on the Bonds as the same shall become due and payable, and to withdraw from the Bond Fund moneys or Available Moneys, as required, sufficient to pay any other amounts payable therefrom as the same shall become due and payable. Moneys from the Bond Fund for the payment of the principal of, redemption premium (if any) and interest on the Bonds shall be derived from the following sources in the order of priority indicated:

(1) all accrued interest and purchase premium, if any, paid by the initial purchasers of Bonds, and any amounts derived from the investment of such amounts;

(2) in the case of Bonds secured by a Credit Facility, all amounts drawn by the Trustee under the relevant Letter of Credit or other Credit Facility, and any amounts derived from the investment of such amounts;

(3) moneys remaining in the Construction Fund as provided in Section 5.01(g) which were deposited from proceeds of a Series of Bonds or were derived from earnings on moneys deposited in the Construction Fund from Bond proceeds;

(4) proceeds of the issuance and sale of Refunding Bonds pursuant to the provisions of Section 2.11 or from proceeds of the issuance and sale of other bonds of the Issuer, and any amounts derived from the investment of such proceeds;

(5) all Facility Rentals (except moneys received to pay the purchase price of Bonds being purchased pursuant to Section 2.02) paid by the Company pursuant to the Agreement and amounts derived from the investment of such amounts; and

(6) all other amounts received by the Trustee from any other source accompanied by a direction that such moneys are to be paid into the Bond Fund, and any amounts derived from the investment of such amounts.

(b) On any day on which payment of principal or interest shall become due on a Series of Bonds secured by the Letter of Credit or a Credit Facility, the Trustee, without making any prior claim or demand upon the Company, shall draw moneys under and in accordance with the terms of the Letter of Credit or other Credit Facility, if any, as provided in Section 4.10 in a timely manner so as to receive moneys thereunder in an amount equal to such amount of principal and interest coming due on such Bonds on the payment date with respect to which such draw is made and the redemption premium (if any) applicable thereto if the Credit Facility then in effect provides for the payment of such premium. The

Trustee shall give, or cause to be given, notice to the Company by telephone or telex, promptly confirmed in writing, immediately after drawing moneys under the Letter of Credit or any other Credit Facility to make any such payment. Moneys received by the Trustee pursuant to draws under the Letter of Credit or other Credit Facility shall not be used to pay principal of or interest on any Bonds with respect to any period when such Bonds are Escrow Bonds. Moneys received pursuant to draws on the Credit Facility shall only be applied to the payment of principal, redemption premium (if any) or interest on Bonds which are secured by the Credit Facility (except for principal, redemption premium (if any) or interest on any such Bond accruing for any period when such Bond is an Escrow Bond), or, if no need exists for such purposes, shall be returned to the Credit Bank to the extent that the Credit Bank has not been reimbursed by the Company for any draws made on the Credit Facility. The Trustee shall be entitled to rely conclusively on a certificate of an officer of the Credit Bank in determining the extent to which the Credit Bank has not been reimbursed for such draws. In the event the Credit Facility at the time in effect with respect to any Bonds shall not provide for the payment of redemption premium applicable to the Bonds, then on any date on which such redemption premium is due, moneys drawn by the Trustee under the Credit Facility shall be applied to the payment of principal and interest on the Bonds and not to the payment of such redemption premium. As provided in Section 4.03, moneys received pursuant to a draw on any Credit Facility shall be held in a separate account or sub-account.

(c) Notwithstanding the foregoing, (i) amounts held in the Bond Fund (A) with respect to the related Series

of Bonds, may be used to reimburse any commercial lending institution which is party to a Credit Facility for a draw on such a Credit Facility made to provide funds of the payment of principal of and premium, if any, and interest on such Bonds, and (B) with respect to any Series of Additional Bonds and to the extent provided in the related Supplemental Indenture, may be used to reimburse any commercial lending institution which is a party to any letter-of credit or other Credit Facility then in place for a draw on such letter of credit or other Credit Facility made to provide funds for the payment of principal of and premium, if any, and interest on such Series of Additional Bonds, as the case may be, and (ii) amounts deposited in the Bond Fund pursuant to Sections 7.01 and 7.02 of the Agreement shall be paid to the Company upon direction by the Company pursuant to, and upon the receipt of an opinion of Bond Counsel as described in, Sections 7.01 and 7.02 of the Agreement.

SECTION 4.06. Bonds Not Presented for Payment. If any Bonds shall not be presented for payment when the principal thereof becomes due, or, with respect to Bonds in a Short-Term Interest Rate Period, when the interest thereon becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, or if any check or draft mailed to an Owner in connection with a payment of interest on any Bond shall not be cashed by such Owner, if moneys or Available Moneys, as appropriate and required, sufficient to pay such Bonds are held by the Paying Agent for the benefit of the Owners thereof, the Paying Agent shall segregate and hold such moneys in trust uninvested without liability for interest thereon, for the benefit of Owners of such Bonds, who shall, except as provided in the following

paragraph, thereafter be restricted exclusively to such fund or funds for the satisfaction of any claim of whatever nature on their part under this Indenture or relating to such Bonds. Moneys so held by the Paying Agent which are received pursuant to draws on any Credit Facility shall be held by the Paying Agent in a separate account or sub-account separate and apart from moneys received from other sources.

Any moneys which the Paying Agent shall segregate and hold in trust for the payment of the principal of or interest or any premium on any Bond and remaining unclaimed for two years after such principal, interest or any premium shall have become due and payable shall be paid to the Trustee upon its request. The Trustee will apply such moneys first to the Credit Bank, to the extent that there have been draws under the Credit Facility for which the Credit Bank has not been reimbursed, and then to the Company. In connection with any such payment to the Credit Bank, the Trustee shall be entitled to rely conclusively on a certificate of an officer of the Credit Bank in determining the extent to which the Credit Bank has not been reimbursed for such draws. After the payment of such unclaimed moneys to the Company or to the Credit Bank, the Owner of such Bond shall look only to the Company for the payment thereof.

SECTION 4.07. Moneys Held in Trust. All moneys required to be deposited with or paid to the Trustee for deposit into the Bond Fund and the Construction Fund under any provision hereof and all moneys withdrawn from the Bond Fund and the Construction Fund and held by the Trustee or the Paying Agent shall be held by the Trustee or the Paying Agent, as the case may be, in trust.

SECTION 4.08. Payment to the Credit Bank or Company. Any moneys remaining in the Bond Fund after the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer under this Indenture shall have ceased, terminated and become void and shall have been satisfied and discharged in accordance with Article VIII, shall be paid first to the Credit Bank, to the extent that there have been draws under the Credit Facility for which the Credit Bank has not been reimbursed, and then to the Company. The Trustee shall be entitled to rely conclusively on a certificate of an officer of the Credit Bank in determining the extent to which the Credit Bank has not been reimbursed for such draws.

SECTION 4.09. Rebate Fund. There is hereby created in the custody of the Trustee a separate fund to be designated "Kenton County Airport Board Special Facilities Revenue Bonds, 1992 Series A and B Rebate Fund (Delta Air Lines, Inc. Project)". Any provisions hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any liens hereunder and such moneys may not be used for payment of amounts due on the 1992 Series A and B Bonds or any other Bonds. Upon the issuance of any Series of Additional Bonds, additional separate Rebate Funds shall be created with respect thereto.

Section 4.10. Credit Facility.

(a) The Trustee is hereby directed, in respect of any Series of Bonds secured by a Credit Facility, on or prior to each Interest Payment Date, as required by the applicable reimbursement agreement and Credit Facility, to make a drawing under the Credit Facility no later than the time provided in the relevant Letter

of Credit or other Credit Facility for presentations of drafts in order to receive payment in immediately available funds by the New York City time provided in the applicable Letter of Credit or Credit Facility on the date when drawings under such Credit Facility are to be received, equal to the interest on such Bonds as may be then payable from the Credit Facility due on such Interest Payment Date (other than such interest representing the purchase price of any such Bonds required to be purchased on such date) and to use such drawing to pay such interest due on such Interest Payment Date. The proceeds of such drawing shall be deposited in the Bond Fund in the separate account or sub-account created in respect of the applicable Series of Bonds separate and apart from any moneys not received pursuant to a draw on a Credit Facility pending application to the payment of interest on such Bonds. The Trustee may direct that the proceeds of any such drawing shall be paid directly to the Paying Agent or the Tender Agent, as appropriate. In determining the amount of any such interest then due, the Trustee shall not take into consideration any interest due on any Bond for any period when any such Bond is an Escrow Bond and no drawings under the Credit Facility shall be made or be used to pay interest on any Bond for any period when such Bond is an Escrow Bond.

(b) On each date on which a payment of principal or redemption premium (if any) on any Bonds of a Series then secured by and payable from a Credit Facility is due either by maturity or as a result of any mandatory or optional redemption of such Bonds or any acceleration of the maturity of such Bonds or any tender of any Bonds for purchase or otherwise (in each case, other than any principal, and premium, if any, due on Escrow Bonds), the Trustee is hereby

directed to make a drawing under the Credit Facility no later than the time provided in the Letter of Credit or other Credit Facility for presentations of drafts in order to receive payment in immediately available funds by the New York City time provided in the applicable Letter of Credit or Credit Facility on such date, equal to the amount of such principal payment, and if covered by the Credit Facility then in effect, redemption premium then due and use such drawing to make such payment. The proceeds of such drawing shall be deposited in the Bond Fund in the separate account or sub-account created in respect of the applicable Series of Bonds separate and apart from any moneys not received pursuant to a draw on a Credit Facility pending application to the payment of the principal and premium (if applicable) of such Bonds or if so ordered by the Trustee shall be paid directly to the Paying Agent or the Tender Agent, as appropriate. In determining the amount of such principal and premium (if applicable) then due, the Trustee shall not take into consideration any principal or redemption premium required on Escrow Bonds and no drawings under the Credit Facility shall be made or be used to pay any principal or redemption premium of Escrow Bonds.

(c) If at any time there shall have been delivered to the Trustee an Alternate Letter of Credit or Alternate Credit Facility pursuant to Section 4.11 of this Indenture and the documents required by such Section 4.11, then the Trustee shall accept such new Credit Facility and surrender the previously held Credit Facility for cancellation in accordance with the terms of such Credit Facility, provided that no such surrender shall occur until after the date, if any, on which the Bonds are subject to mandatory purchase in accordance with Section 2.02(d). If at any time all

Bonds then secured by the Letter of Credit or other Credit Facility shall have been defeased pursuant to Article VIII of this Indenture, the Trustee shall surrender the Letter of Credit or other Credit Facility in effect prior to such defeasance to the issuer or provider thereof in accordance with the terms of such Letter of Credit or other Credit Facility for cancellation. The Trustee shall comply with the procedure set forth in the Letter of Credit or other Credit Facility relating to the termination thereof and is authorized to deliver certificates reducing the Stated Amount of the Letter of Credit or other Credit Facility in accordance with the provisions thereof.

SECTION 4.11. Alternate Letter of Credit; Alternate Credit Facility.

(a) At any time prior to the expiration of the Letter of Credit or other Credit Facility, as then in effect with respect to the Bonds of a Series, the Company may, at its option, provide for the delivery to the Trustee of any Alternate Letter of Credit. Any such Alternate Letter of Credit shall be an irrevocable letter of credit, other than the Letter of Credit delivered to the Trustee on the Date of Issuance, issued by a domestic or foreign commercial bank, which has a term of at least one year. Any Alternate Letter of Credit delivered to the Trustee pursuant to this Section shall contain administrative provisions reasonably acceptable to the Trustee. On or prior to the date of the delivery of such Alternate Letter of Credit to the Trustee, the Company shall furnish to the Trustee (i) a Favorable Opinion of Bond Counsel, (ii) either (A) written evidence from Moody's, if such Bonds are then rated by Moody's, and S&P, if such Bonds are then rated by S&P, in each case to the effect that the ratings of such Bonds (if any) will not be withdrawn

or reduced as a result of such replacement or (B) a statement of the Company that no ratings have been obtained, (iii) if such Alternate Letter of Credit is issued by a bank other than a domestic commercial bank, an opinion of Counsel that no registration of such Bonds or such Alternate Letter of Credit is required under the Securities Act of 1933, as amended, nor is the Indenture required to be qualified under the Trust Indenture Act of 1939, as amended, and (iv) an opinion of Counsel satisfactory to the Trustee to the effect that such Alternate Letter of Credit is a valid and enforceable obligation of the issuer or provider thereof. Upon receipt of the Alternate Letter of Credit and the other items specified in this Section 4.11(a), and after notice of delivery of such Alternate Letter of Credit has been given as provided in Section 4.13, the Trustee shall surrender the Letter of Credit to the issuer thereof for cancellation. If the Letter of Credit is replaced by an Alternate Letter of Credit as provided in and meeting the requirements of this Section 4.11(a) at least 45 days prior to the date of termination, expiration, reduction or modification of the Letter of Credit, the Bonds so secured shall not *be* subject to mandatory tender for purchase as provided in Section 2.02(d) hereof but the notice required by Section 4.13 shall be given.

(b) If at any time there shall be delivered to the Trustee (i) an Alternate Credit Facility covering all or any portion of the Bonds of a Series, (ii) a Favorable Opinion of Bond Counsel, (iii) either (A) written evidence from Moody's, if such Bonds are then rated by Moody's, and S&P, if such Bonds are then rated by S&P, in each case to the effect that the ratings of such Bonds (if any) will not be withdrawn or reduced as a result of such replacement or (B) a statement of

the Company that no ratings have been obtained, (iv) if such Alternate Credit Facility is issued by a bank other than a domestic commercial bank, an opinion of Counsel (if any) that no registration of such Bonds *or* such Alternate Credit Facility is required under the Securities Act of 1933, as amended, and that no qualification of the Indenture is required under the Trust Indenture Act of 1939, as amended, (v) an opinion of Counsel satisfactory to the Trustee to the effect that such Alternate Credit Facility is a valid and enforceable obligation of the issuer or provider thereof, (vi) all information required to give the notice of mandatory tender for purchase of such Bonds as required by Section 2.02(d), then the Trustee shall accept such Alternate Credit Facility and; after the date of the mandatory tender for purchase established pursuant to Section 2.02(d), promptly surrender the Credit Facility then in effect to the Credit Bank which issued such Credit Facility in accordance with its terms for cancellation or deliver any document necessary to reduce the coverage of such Credit Facility.

SECTION 4.12. Rights and Duties Under Credit Facilities. The Trustee is hereby instructed, without further direction, to draw amounts under the Letter of Credit or such other Credit Facility as may be substituted therefor in accordance with the terms and conditions set forth herein at the times, in the manner and for the purposes set forth in this Indenture. If the Trustee makes a drawing under the Credit Facility after the principal of the Bonds of the related Series shall have been declared immediately due and payable following the occurrence of an Event of Default with respect to such Bonds, the proceeds of such drawing shall be applied by the Trustee as promptly as practicable to the payment of such Bonds entitled to be paid therefrom. So long as the Credit

Facility remains in effect with respect to any Bonds, the Trustee may not waive any Event of Default with respect to such Bonds if a drawing has been made under the Credit Facility, all or any portion of which is subject to reinstatement as provided in the Credit Facility, and such reinstatement has not yet occurred. The Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Trustee and of the Issuer and all obligations of the Credit Bank (including the obligation of the Credit Bank to honor drawings duly presented in accordance with the terms and conditions of the Credit Facility) under and pursuant to the Credit Facility, for the benefit of the Owners of the Bonds of the related Series. The Trustee agrees to assume and perform the duties and obligations contemplated under the Credit Facility to be assumed and performed by the Trustee.

SECTION 4.13. Notice of Termination, Event of Default or Other Change in Credit Facility. The Registrar shall give notice by mail to the Owners of the Bonds of *a* Series then payable from the Credit Facility (if any) on or before the 15th day preceding the termination or expiration of any Credit Facility in accordance with its terms, of any reduction, replacement or modification of the terms of the Credit Facility or any event of default under the Reimbursement Agreement of which the Trustee has been given notice by the Credit Bank, or, in the case of failure of the Credit Bank to reinstate the amount payable under the Credit Facility with respect to interest on such Bonds within the time provided therein following a drawing with any respect to interest on such Bonds, within two Business Days following the failure of the Credit Bank to reinstate the amount payable therein with respect to interest, together with a

direction to tender such Bonds for purchase as provided in Section 2.02(d) (if applicable), which notice shall (i) describe generally the Credit Facility, if any, in effect prior to such termination, expiration, reduction or modification and the Alternate Credit Facility, if any, in effect or to be in effect upon such replacement, termination, expiration, reduction or modification, (ii) state the date of such replacement, termination or expiration, and the date of the proposed substitution of the Alternate Credit Facility (if any), (iii) describe any reduction or modification of the Credit Facility and the effective date thereof, and if the Credit Facility is being replaced, a description of the replacement therefor, (iv) specify the rating, if any, to be applicable to such Bonds after such replacement, termination, expiration, reduction or modification of the Credit Facility or state that no ratings have been obtained with respect to such Bonds for the period subsequent to such replacement, termination, expiration, reduction or modification of the Credit Facility, (v) unless the Credit Facility has been timely replaced by an Alternate Letter of Credit in respect of such Bonds as provided in Section 2.02(d) and Section 4.11(a), state that the Bonds will be purchased pursuant to Section 2.02(d) on the fifth Business Day preceding such expiration, termination, reduction or modification or, in the case of a mandatory purchase due to a failure to reinstate the amount payable on the Credit Facility following a drawing thereon for interest due on such Bonds, on the date determined as provided in Section 2.02(d), and (vi) if such Bonds are subject to mandatory purchase pursuant to Section 2.02(d), any other information required in the notice to the Owners of the Bonds by Section 2.02(d). The Company will give the Trustee, Registrar, and Paying Agent written notification of

any modification, reduction or replacement of the Credit Facility as soon as practicable after receiving knowledge thereof. The Company shall provide the Trustee and the Registrar with written notice of any information required to enable the Registrar to give the foregoing notice and shall provide the Registrar with the form of such notice; provided, however, that in the event the Company shall fail to provide such notice, the Trustee shall provide such notice to the Registrar.

In the event that the coverage of the Credit Facility is reduced under the circumstances described in the last paragraph of Section 2.02(d), then no notice of such reduction shall be required to be given under this Section.

(End of Article IV)

ARTICLE V

ESTABLISHMENT OF CONSTRUCTION FUND AND RELATED PROVISIONS

SECTION 5.01. Construction Fund. (a) There is hereby created and established a special trust fund of the Issuer designated as the "Kenton County Airport Board Special Facilities Revenue Bonds, Construction Fund (Delta Air Lines, Inc. Project") (hereinafter referred to as the "Construction Fund") to be held and administered by the Trustee hereunder.

Construction Accounts. There are hereby initially created and established two separate accounts in the Construction Fund to be known as the (i) "Construction Account, 1992 Series A (Delta Air Lines, Inc. Project)" (hereinafter referred to as the "1992 Series A Construction Account") and the (ii) "Construction Account, 1992 Series B (Delta Air Lines, Inc. Project)" (hereinafter referred to as the "1992 Series B Construction Account"). There shall be credited to the 1992 Series A Construction Account the proceeds of the 1992 Series A Bonds allocated to such Construction Account to be applied to the appropriate Costs of Construction of the Project Facilities financed by application of the proceeds of the 1992 Series A Bonds and there shall be credited to the 1992 Series B Construction Account the proceeds of the 1992 Series B Bonds allocated to such Construction Account to be applied to the appropriate Costs of Construction of the Project Facilities financed by application of the proceeds of the 1992 Series B Bonds.

(b) In the event of the issuance of Additional Bonds hereunder for the purposes of paying Costs of Construction, the Issuer, in the Supplemental Indenture providing for such Additional Bonds, may create

additional construction accounts in the Construction Fund from which such Costs of Construction shall be paid (unless such accounts shall then already be in existence in the Construction Fund), and shall provide for a credit to such construction accounts of that amount of the proceeds of such Additional Bonds which are to be applied to the payment of such Costs of Construction. In the event that any interest on such Additional Bonds is to be provided from the proceeds of such Bonds, the Issuer, in the Supplemental Indenture providing for such Additional Bonds, shall specify the amount of such proceeds to be applied to the payment of such interest or the formula for determining such amount, and shall deposit the same in the construction account created for such Series of Additional Bonds.

(c) The moneys on deposit from time to time in the Construction Fund shall be held under and subject to this Indenture; shall be subject to the liens, pledges, charges, assignments and trusts created hereby for the security and benefit of the Owners of the Bonds; and, unless otherwise specifically provided in this Section 5.01, shall be used and applied solely to the payment of the Costs of Construction in accordance with the remaining provisions of this Section 5.01.

(d) As used in this Indenture (i) the word "construction" shall include the acquisition, construction, reconstruction, purchase, establishment, development, expansion, remodeling, renovating, adding to or improving the Project Facilities and reimbursing the Company for Costs of Construction paid by the Company prior to the issuance of the Bonds; and (ii) the term "Costs of Construction" shall include, to the extent permitted by law, but not be limited to:

(A) the cost of acquiring or constructing any building or facility for the Project Facilities;

(B) the cost of acquiring such land or leasehold interests in land, rights, rights-of-way, easements or other interests in land or other properties (real, personal or mixed) as may be deemed necessary or convenient for the construction or operation of the Project Facilities, including costs of options and partial payments, escrow deposits, preliminary and final awards or judgments and settlements or compromises, with respect to the foregoing; costs of reclaiming land; costs of dredging or filling incurred in the creation of land; and site preparation, including the costs of demolishing, removing or relocating any building or facility and the costs of any lands to which such building or facility may be removed or relocated; and relocation or moving expense of individuals or businesses to be displaced, replacement housing costs, and administrative costs relating to the foregoing;

(C) costs of acquiring any rights, interests or franchises deemed necessary or convenient by the Company or the Issuer for the construction or operation of the Project Facilities;

(D) costs of labor, services, material, supplies, machinery, equipment and apparatus; including payments to contractors, builders and material men in connection therewith, and of restoration of property damaged or destroyed in connection with construction work on the Project Facilities;

(E) costs of installation of utility services or connections thereto or relocation thereof for the Project Facilities;

(F) costs and expenses of all preliminary work necessary or incidental to construction of the Project Facilities;

(G) costs and expenses of planning, engineering and other studies, architectural drawings, surveys, tests and specifications, whether preliminary or otherwise; and costs of other engineering and architectural services for the Project Facilities;

(H) costs of supervision and inspection of the Project Facilities;

(I) costs of builders' risk, liability or other insurance with respect to the buildings and facilities being constructed, or a reasonably allocated share thereof for the Project Facilities;

(J) costs of indemnity and fidelity bonds and expenses of administration properly chargeable to such construction of the Project Facilities;

(K) costs and expenses of financing, including the fees and expenses of the Credit Bank, the Trustee, the Registrar and Paying Agent, the Tender Agent and the Remarketing Agent during the period of construction, but not to exceed the actual period of construction and a reasonable time thereafter; costs incurred in issuing the Bonds, including underwriting discount and legal, financing and accounting fees and expenses, printing, engraving and advertising; and other similar costs including without limitation all fees, costs and expenses in connection with the preparation of this Indenture, the Agreement, the Bonds and the consummation of the transactions contemplated hereby;

(L) costs of the initial furnishings of any building or structure included in the Project Facilities;

(M) costs of publication, advertising, filing and recording relating to or in respect of the Project Facilities;

(N) taxes, assessments and other charges relating to or in respect of the Project Facilities;

(O) expenses incurred in enforcing any remedy against a contractor or subcontractor in respect of any default relating to the Project Facilities;

(P) costs of estimates of costs and economic feasibility reports whether preliminary or otherwise; fees, costs and expenses of appraising, printing, advice, accounting and fiscal services, airport consultants, financial consultants, underwriters, attorneys (including Bond Counsel), clerical help and other independent contractors, agents or employees relating to or in respect of the Project Facilities;

(Q) the payment and discharge of the principal of and interest and premium, if any, on any interim or temporary construction financing or loans, including the reimbursement in full of the Company for all advances and payments made by the Company at any time prior to or after the delivery of the Bonds for expenditures in connection with the preparation of plans and specifications for the Project Facilities (including any preliminary study or planning of the Project Facilities or any aspect thereof) and the construction and installation of the Project Facilities;

(R) interest on the Bonds issued to finance the construction of all or any portion of the Project Facilities during the period of construction or as may be permitted by law; and

(S) any and all other costs and expenses necessary or desirable and pertaining or incident to construction

of any project included in the Project Facilities, as estimated or otherwise ascertained by the Company.

(e) Payments from moneys on deposit in the Construction Fund (other than payment of capitalized interest) from proceeds of the several Series of Bonds or from amounts received pursuant to Section 3.05 of the Agreement shall be made to or at the direction of the Company only in accordance with the provisions of this Section 5.01. Payments from moneys on deposit in the Construction Fund from Additional Bonds shall be disbursed as provided in the Supplemental Indenture authorizing the issuance thereof. Before any such payment shall be made there shall be filed with the Trustee a written requisition for such payment signed by an Authorized Company Representative or such other officer or employee of the Company as the Company shall designate from time to time stating as to the portion of the Project Facilities to which such requisition relates:

(i) the amount to be paid and the name of the person to whom payment is due (which person may be the Company);

(ii) that an obligation in the stated amount has been incurred by or on behalf of the Issuer or the Company and has not theretofore been paid;

(iii) that the payment of such amount is a proper charge against such Construction Account and specifying the purpose and circumstances of such obligation in reasonable detail; and

(iv) except in respect of payments made for costs of issuance, as of the date of such requisition, of the total amount of the proceeds of a series of Bonds theretofore applied and the amount then being requisitioned, no less than ninety-five percent (95%),

including investment earnings thereon not subject to rebate, has been or will be expended for the qualified costs of exempt facilities within the meaning of Section 142(a)(1) of the Code paid or incurred after action taken by the Issuer pursuant to Treasury Regulation Section 1.103-8(a)(5)(v) (the "Qualified Cost") and no more than five percent (5%) of the total amount theretofore expended and then being requisitioned, including investment earnings thereon not subject to rebate, has been or is being requisitioned from the proceeds of the series of Bonds for non-qualifying costs of the facilities to be financed from the proceeds of the Bonds.

(f) Subject to subparagraph (h), upon receipt of each requisition and certificate referred to in this Section 5.01, the Trustee shall pay each such obligation. In making any payment under this Section 5.01, the Trustee may rely on any such requisition and certificate.

(g) The Completion Date in respect of the applicable Project Facilities shall be evidenced to the Trustee and the Issuer by a certificate signed by an Authorized Company Representative conforming to the requirements of Section 3.04 of the Agreement. Moneys remaining in the appropriate account of the Construction Fund (including any earnings on investments which remain in the appropriate account of the Construction Fund) after the Completion Date may be used, at the direction of the Company, for the following purposes: (i) for the payment of any applicable Costs of Construction incurred prior to the Completion Date but not then due and payable as of the Completion Date as specified in the certificate of the Completion Date referred to above or for Costs of Construction which are not Qualified Costs which

may be properly expended therefor at the direction of the Company in accordance with subsection (e)(iv) above, (ii) either transferred to the Bond Fund to be applied to, or paid to the Credit Bank to reimburse the Credit Bank for the application of draws on the Credit Facility for, the payment of principal only upon the redemption of Bonds on the earliest practicable redemption date permitted under the Indenture for which no redemption premium applies, or (iii) for transfer to the Bond Fund to be applied: (A) prior to the selection by the Registrar of applicable Bonds to be so redeemed, to the payment of principal only upon the purchase of applicable Bonds at the direction of the Company in the open market; provided such Bonds shall be cancelled by the Registrar, or (B) for any other use for which an opinion of Tax Counsel is obtained by the Company and delivered to the Trustee to the effect that such use will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds. Any amounts remaining in the Construction Fund after the Completion Date, other than the amounts described in clause (i) above, shall be held by the Trustee uninvested or shall be invested by the Trustee at a yield not greater than the yield on the Bonds of the Series from which such proceeds are derived, as such yield shall be certified to the Trustee by or on behalf of the Issuer or as shall be set forth in an opinion of Tax Counsel, unless the Company shall obtain and deliver to the Trustee an opinion of Tax Counsel stating that such restriction of yield is not necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(h) Moneys in the Construction Fund to be used for payment of interest on applicable Series of Bonds during construction shall be applied by the Trustee

as follows: upon requisition therefor, on each Interest Payment Date there shall be withdrawn from the Construction Account created for the administration of such moneys and either (i) deposited in the Bond Fund in an amount, which together with accrued interest received upon the sale of the series of Bonds with respect to which such Construction Account was established, shall be equal to the interest attributable to the facilities for which such interest was funded to become due on such Interest Payment Date on such Series of Bonds, or (ii) paid to the Credit Bank to reimburse the Bank for draws upon the Credit Facility to pay interest on the Bonds.

(End of Article V)

ARTICLE VI

INVESTMENTS

SECTION 6.01. Investments. The moneys in the Construction Fund and the Bond Fund (other than the moneys described in Sections 3.05(b) and 4.06, which may not be invested) and the Rebate Funds shall, at the direction of the Company, be invested and reinvested in Investment Securities or held uninvested to the extent not prohibited by applicable law. The income from, and any gain or loss from, any investment shall be credited to or charged against the fund and applicable account, if any, from which such investment was made. Any Investment Securities may be purchased subject to options or other rights in third parties to acquire the same. In addition, the Trustee shall, at the direction of the Company, enter into custodial agreements providing for the investment of moneys through a custodian, reverse repurchase agreements, option agreements and agreements to lend securities with respect to any Investment Securities held by it. Subject to the further provisions of this Section, such investments shall be made, and such agreements entered into, by the Trustee as directed and designated by the Company in a certificate of, or telephonic advice promptly confirmed by a certificate of, an Authorized Company Representative. As and when any amounts thus invested may be needed for disbursements from the Construction Fund, the Bond Fund or the Rebate Fund, the Trustee shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such fund. The Trustee shall have no responsibility under this Indenture with respect to compliance by the Company or the Issuer with any covenant herein or in the Agreement

regarding the yield on investments made in accordance with this Section, other than to use its best reasonable efforts to comply with instructions from the Company or the Issuer regarding such investments and the Trustee shall bear no responsibility for losses incurred from such investments. Moneys held by the Tender Agent in the Bond Purchase Fund shall not be invested. Any investments made by the Trustee pursuant to this Section may be made through its own bond or investment department.

(End of Article VI)

ARTICLE VII

GENERAL COVENANTS

SECTION 7.01. No General Obligations. Each and every covenant made herein, including all covenants made in the various sections of this Article, is predicated upon the condition that the Bonds of all Series shall not be general obligations of the Issuer nor constitute a debt or pledge of the faith and credit of Kenton County, Kentucky, or the Commonwealth within the meaning of any constitutional or statutory provision whatsoever, but shall be a limited obligation of the Issuer payable solely from the Receipts and Revenues of the Issuer and the other moneys pledged therefor under this Indenture.

The Issuer shall promptly cause to be paid, but solely and only from the sources stated herein, the principal or purchase price of and interest and any premium on every Bond issued under this Indenture at the place, on the date and in the manner provided herein and in the Bonds according to the true intent and meaning thereof.

In Section 4.07 of the Agreement, the Company has, among other things, covenanted, for the benefit of the Owners of the 1992 Series A and B Bonds, to cause the necessary arrangements to be made and to be thereafter continued whereby the Owners of the 1992 Series A and B Bonds may, subject to the terms and conditions approved by the Company, deliver Bonds which may be or must be so delivered for purchase, and whereby such Bonds shall be so purchased. In furtherance of such covenant, the Issuer, at the direction of the Company has set forth in Section 2.02 the terms and conditions relating to the delivery of relevant Bonds by the Owners thereof to the Tender

Agent for purchase and has set forth in Article XIII the duties and responsibilities of the Tender Agent and the Remarketing Agent with respect to the purchase of relevant Bonds, and the duties and responsibilities of the Remarketing Agent with respect to the remarketing of relevant Bonds; and has provided for the appointment by the Company of the Tender Agent and the Remarketing Agent as contemplated in Article XIII hereof. The Issuer shall have no further obligation or responsibility with respect to the purchase or remarketing of relevant Bonds or the making or continuation of arrangements therefor, except that the Issuer shall generally cooperate with the Company, the Trustee, the Tender Agent and the Remarketing Agent as contemplated in Article XIII to the extent permitted by law.

Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusivly on the truth and accuracy of any-certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee or the Company as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record-keeping or to provide any legal services, it being understood that such services shall be performed either by the Trustee, the Registrar, the Authenticating Agent, the Paying Agent, the Tender Agent or the Company; and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified

to its satisfaction against the cost, expenses and liability which may be incurred thereby.

Notwithstanding anything herein contained to the contrary, any obligation which the Issuer may incur under this Indenture or under any instrument executed in connection herewith which shall entail the expenditure of money shall not be a general obligation of the Issuer but shall be a limited obligation as described in the first paragraph of this Section.

SECTION 7.02. Performance of Covenants of the Issuer; Representations. The Issuer shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder, and in all proceedings pertaining thereto. The Issuer represents that it is duly authorized under the Constitution and laws of the Commonwealth to issue the Bonds authorized hereby, to enter into this Indenture and the Agreement, and to assign to the Trustee the Trust Estate and that the Bonds in the hands of the Owners thereof are and will be valid and binding obligations of the Issuer.

SECTION 7.03. Maintenance of Corporate Existence; Compliance with Laws. The Issuer shall at all times maintain its corporate existence or assure the assumption of its obligations under this Indenture by any other body succeeding to its powers under the Act. The Issuer shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body known to it to be applicable to the Agreement and this Indenture.

SECTION 7.04. Enforcement of Obligations of the Company. Upon receipt of written notification from

the Trustee, the Issuer shall cooperate with the Trustee in enforcing the obligation of the Company to pay or cause to be paid all the payments and other costs and charges payable by the Company under the Agreement.

SECTION 7.05. Further Instruments. The Issuer shall, upon the reasonable request of the Trustee, from time to time execute and deliver such further instruments as may be reasonable and as may be required to carry out the purposes of this Indenture; provided, however, that no such instruments shall pledge the credit or taxing power of the Issuer.

SECTION 7.06. No Disposition of Trust Estate. Except as permitted by this Indenture, including Section 7.03, the Issuer shall not sell, lease, pledge, assign or otherwise dispose of or encumber its interest in the Trust Estate and will promptly pay or cause to be discharged or make adequate provision to discharge any lien or charge on any part thereof not permitted hereby.

SECTION 7.07. Access to Books and Records. All books and documents in the possession of the Issuer relating to the Bonds and the Project Facilities and the moneys, revenues or receipts derived from the Project Facilities shall at all reasonable times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate. The Trustee shall, and hereby agrees to, permit the Company or its designee reasonable access to all records relating to the investment of the proceeds of the Bonds or any other records relating to the Bonds necessary to assure compliance with Section 148 of the Code.

SECTION 7.08. Tax Covenants.

(1) The Issuer shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Bonds shall, for the purposes of federal income taxation, be not includable in the gross income of the recipients thereof for federal income taxation purposes under any valid provision of the Code.

(2) The Issuer certifies and covenants with the purchasers and Owners of the Bonds from time to time outstanding that so long as any of the Bonds remain Outstanding, moneys on deposit in any fund or account which are deemed by the Code to be proceeds of the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used or invested in a manner which will cause the Bonds to be "arbitrage bonds" within the meaning of Sections 103 and 148 of the Code and regulations promulgated or proposed thereunder, including Sections 1.103-13, 1.103-14 and 1.103-15 of the Income Tax Regulations (25 CFR Part 1), as the same presently exist or may from time to time hereinafter be amended, supplemented or revised.

(3) The Issuer further covenants that none of the proceeds of a Series of Bonds will be invested in non-purpose obligations at a yield in excess of the yield on such Series of Bonds except (i) during an authorized temporary period applicable to such Bonds, (ii) in respect of a reasonably required reserve or replacement fund, if any and (iii) in respect of a minor portion of proceeds not in excess of the lesser of 5% of the proceeds of such Series of Bonds or $100,000, in each case as authorized and permitted by the Code. No

gross proceeds of the Bonds will be used to make any investment, purchase or payment which is violative of any provision of the Code or the Treasury Regulations promulgated thereunder.

(4) There has been created and there shall be created by Section 4.09 hereof the Rebate Fund, which shall be continually held, invested, expended and accounted for in accordance with the Act, this Indenture and the Code. Additional rebate accounts shall be created as required, if Additional Bonds are hereafter issued. Moneys in the Rebate Fund shall not be considered moneys held under this Indenture and shall not constitute a part of the Trust Estate held for the benefit of the Bondholders; or for the benefit of the Issuer. Moneys in the Rebate Fund (including earnings and deposits therein) shall be held in trust by the Trustee and, except for excess amounts transferred to the Company, shall be held for future payment to the United States of America as required by the Code.

(5) The Issuer covenants to rebate Excess Earnings to the United States of America pursuant to the Code and to maintain books and records and make calculations and reports and to establish such internal administrative procedures as required to prudently monitor and administer Excess Earnings, in order to assure such rebate payments.

(6) The Issuer further covenants that prior to the issuance of any Series of Bonds and as a condition precedent to such issuance, the Issuer shall certify by issuance of a certificate by an authorized officer having responsibility for the receipt, disbursement, use and investment of the proceeds of such Series of Bonds that, on the basis of the facts, estimates and circumstances in existence on the date of issue of

such Series of Bonds it is not expected that the proceeds of such Series of Bonds will be used in a manner that would cause such obligations to be arbitrage bonds.

SECTION 7.09. Covenant Not to Assign Trust Estate. The Trustee agrees that except in connection with the appointment of a successor trustee pursuant to Article X, it shall not transfer or assign all or any portion of the Trust Estate.

SECTION 7.10. Payment of costs and expenses of the Issuer. Notwithstanding anything in this Indenture, the Agreement or any other document executed or delivered in connection with the issuance of any Bonds, the Issuer shall not be required to take any action of any nature, or to cooperate in any respect, unless and until the Company has agreed to pay all reasonable costs, including, but not limited to, all reasonable fees and expenses of attorneys selected by the Issuer (and reasonably acceptable to the Company) to represent its interests. The intention of the Issuer is that the Issuer shall not spend any money or incur any liability or obligation by reason of its issuance of any Bonds, execution, delivery or performance of this Indenture or any Supplemental Indenture, or any other action which the Issuer may take, or may be requested or directed to take, in connection with any Bonds from time to time, unless the Company shall have agreed to reimburse the Issuer immediately for any such spending of money or to indemnify the Issuer, in a manner satisfactory to the Issuer, for any such liability or obligation or unless any such liability is caused by the negligence or willful misconduct of the Issuer.

(End of Article VII)

ARTICLE VIII

DEFEASANCE

SECTION 8.01. Defeasance. If the Issuer shall pay or cause to be paid to the Owner of any Outstanding Bond secured hereby the principal of and interest and any premium due and payable, and thereafter to become due and payable, on such Bond, or any portion of such Bond in an Authorized Denomination, such Bond or portion thereof shall cease to be entitled to any lien, benefit or security under this Indenture (except as set forth in Section 8.02). If the Issuer shall pay or cause to be paid to the Owners of all the Bonds the principal thereof and interest and any premium due and payable and thereafter to become due and payable thereon, and shall pay or cause to be paid all other sums payable hereunder by the Issuer, then the right, title and interest of the Trustee in and to the Trust Estate shall thereupon cease, terminate and be discharged. In such event, the Trustee shall assign, transfer and turn over first, in respect of any Series of Bonds secured by a Credit Facility, to the Credit Bank, to the allocable extent that there have been draws under the Credit Facility for which the Credit Bank has not been reimbursed in respect of any Series of Bonds, and then to the Company, the Trust Estate, including, without limitation, any surplus in the Bond Fund and any balance remaining in any other fund created under this Indenture (except the Rebate Fund). The Trustee shall be entitled to rely conclusively on a certificate of an officer of the Credit Bank in determining the extent to which the Credit Bank has not been reimbursed for any such draws.

Outstanding Bonds shall, prior to the maturity or redemption date thereof, be deemed to have been

paid within the meaning and with the effect expressed in this Article (except as set forth in Section 8.02) when

(a) in the event the Bonds are to be redeemed, the Registrar shall have given, or the Company shall have given to the Registrar in form satisfactory to it irrevocable instructions to give, on a date in accordance with the provisions of Section 3.03, notice of redemption of such Bonds,

(b) all Outstanding Bonds then bear interest at a Long-Term Interest Rate during a Long-Term Interest Rate Period ending on or after the redemption date or on the day immediately preceding the Maturity Date or Maturity Dates, as the case may be, or at Bond Interest Term Rates for Bond Interest Terms which end on the redemption date or the day immediately preceding the Maturity Date, as the case may be and there shall have been deposited with the Trustee either moneys (or Available Moneys in the case of Bonds secured by a Credit Facility) in an amount which shall be sufficient, or Government Obligations (i) which shall not contain provisions permitting the redemption thereof at the option of the issuer thereof, (ii) which mature no later than the earlier of (A) the date fixed for the redemption of such Bonds and (B) the Maturity Date, (iii) the principal of and the interest on which, when due, and without any regard to reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Trustee in the Bond Fund, shall be sufficient to pay when due the principal of and interest and any premium due and to become due on such Bonds on and prior to the redemption date or Maturity Date, as the case may be, and, with respect to Bonds which may be subject to mandatory

tender for purchase pursuant to Section 2.02 or, with respect to any Series of Additional Bonds, the purchase price of such Additional Bonds which may be subject to mandatory tender for purchase pursuant to the Supplemental Indenture providing for the issuance of such Series of Additional Bonds and (iv) which shall have been purchased with Available Moneys in the case of Bonds secured by a Credit Facility, and

(c) in the event such Bonds do not mature and are not to be redeemed within the next succeeding sixty (60) days, the Company shall have given the Registrar, in form satisfactory to it, irrevocable instructions to give, as soon as practicable in the same manner as a notice of redemption is given pursuant to Section 3.03, a notice to the Owners that the deposit required by clause (b) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this Article and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and interest and any premium on such Bonds.

Neither the Government Obligations nor moneys deposited with the Trustee pursuant to this Article nor principal or interest payments on any such Government Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest and any premium on such Bonds.

SECTION 8.02. Survival of Certain Provisions. Notwithstanding the foregoing, any provisions of this Indenture which relate to the payment of the principal of and premium on Bonds at maturity or pursuant to redemption, as the case may be, interest payments and dates thereof, the purchase of Bonds

pursuant to optional or mandatory tender rights, if any, exchange, registration of transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of moneys in trust and repayments to the Company from the Bond Fund, the obligations set forth in Section 4.09 and the duties of the Trustee, the Registrar, the Authenticating Agent and the Paying Agent in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee, the Registrar, the Authenticating Agent, the Paying Agent and the Owners of the Bonds notwithstanding the release and discharge of this Indenture. The provisions of this Section shall survive the release, discharge and satisfaction of this Indenture; provided, however, that the provisions of Section 2.01, permitting adjustments in the Interest Rate Periods with respect to the Bonds, shall not be in effect after the release and discharge of this Indenture.

SECTION 8.03. Redemption, Purchase and Credit Facility Restrictions Applicable Generally to Defeasance. Notwithstanding any provisions to the contrary contained in this Article VIII, no defeasance of any Bonds shall be permitted to the extent such defeasance shall contravene any of the provisions of Article III of this Indenture relating to the redemption of Bonds, including, without limitation, the provisions of Section 3.10(b) hereof.

(End of Article VIII)

ARTICLE IX

DEFAULTS AND REMEDIES

SECTION 9.01. Events of Default. Each of the following events shall constitute and is referred to in this Indenture as an "Event of Default":

(a) a failure to pay the principal of or redemption premium, if any, on any Bond when the same shall become due and payable at stated maturity or upon redemption;

(b) a failure to pay an installment of interest on any Bond after such interest has become due and payable and such failure shall continue for a period of five (5) days;

(c) an "Event of Default" shall occur under the Agreement; or

(d) a failure by the Issuer to observe and perform any covenant, condition, agreement or provision (other than as specified in clauses (a) and (b) of this Section 9.01) contained in the Bonds or in this Indenture on the part of the Issuer to be observed or performed, which failure shall continue for a period of ninety (90) days after written notice, shall have been given to the Issuer and the Company by the Trustee (provided, however that failure to observe the tax covenants herein shall not constitute an Event of Default unless (1) such failure results in a Determination of Taxability and (2) the subject 1992 Series A Bonds or 1992 Series B Bonds are not either mandatorily redeemed in accordance with their terms and as provided herein or defeased prior to such Determination of Taxability) which may give such notice in its discretion and shall give such notice at the written request of the owners of a majority in principal

amount of the Bonds then outstanding and upon receipt of proper security and indemnity from such owners unless the Trustee, or the Trustee and the owners of Bonds then outstanding in principal amount not less than the principal amount of Bonds the owners of which requested such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration or unless such period is deemed to be extended because corrective action is initiated by the Issuer, or the Company on behalf of the Issuer, within such period and is being diligently pursued.

Upon the occurrence and continuance of any Event of Default described in clauses (a) or (b) of the preceding paragraph or an Event of Default described in clause (c) of the preceding paragraph resulting from an "Event of Default" under Section 8.01(c) or 8.02(d) of the Agreement, the Trustee may, and at the written request of Owners of a majority in principal amount of Bonds then Outstanding shall, by written notice to the Issuer and the Company, declare the Bonds to be immediately due and payable, whereupon the Bonds shall, without further action, become and be immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding, and the Trustee shall give notice thereof to the Issuer, the Company, the Paying Agent, the Tender Agent, the Authenticating Agent, the Remarketing Agent and the Owners.

The provisions of the preceding paragraph, however, are subject to the condition that if after the principal of the Bonds shall have been so declared to be due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the

Issuer shall cause to be deposited with the Trustee a sum sufficient to pay all matured installments of interest upon all Bonds and the principal of any and all Bonds which shall have become due otherwise than by reason of such declaration (with interest upon such principal, and to the extent permissible by law, on overdue installments of interest, at the rate per annum borne by the Bonds on the date of such declaration) and such amounts as shall be sufficient to cover reasonable compensation and reimbursement of reasonable expenses payable to the Trustee, the Registrar, the Authenticating Agent, the Tender Agent and the Paying Agent and the reasonable fees and expenses of their counsel, all Events of Default hereunder other than nonpayment of the principal of Bonds which shall have become due by said declaration shall have been remedied, and if the Bonds are secured by the Letter of Credit or other Credit Facility, the Issuer thereof shall confirm that the Letter of Credit or other Credit Facility has been fully reinstated (except as to Escrow Bonds), then, in every such case, such Event of Default shall be deemed waived and such declaration and its consequences rescinded and annulled, and the Trustee shall promptly give written notice of such waiver, rescission and annulment to the Issuer, the Company, the Paying Agent, the Registrar, the Authenticating Agent, the Remarketing Agent, the Credit Bank, and, if notice of the acceleration of the Bonds shall have been given to the Owners, shall give notice thereof to the Owners; but no such waiver, rescission and annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

SECTION 9.02. Remedies. In addition to the rights conferred, or obligations imposed, upon the Trustee under Section 9.01 to accelerate the principal of the

Bonds, upon the occurrence and continuance of any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written request of the Owners of a majority in principal amount of the Bonds then Outstanding and receipt of indemnity to its satisfaction shall, in its own name and as the Trustee of an express trust:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners of the Bonds, and require the Issuer and the Company to carry out any agreements with or for the benefit of the Owners and to perform their duties under the Act, the Agreement and this Indenture;

(b) take all such actions as may be permitted under the Letter of Credit or other Credit Facility;

(c) bring suit upon the Agreement, the Bonds or any Credit Facility; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds.

SECTION 9.03. Restoration to Former Position. If any proceeding taken by the Trustee to enforce any right under this Indenture shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, and the Letter of Credit or other Credit Facility provided for a Series of Bonds shall remain in full force and effect (if one was in effect on the commencement of such proceeding), then the Issuer, the Trustee, the Credit Bank and the Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken to the extent that the exercise of such

rights, remedies or powers would not be prohibited through application of res judicata, collateral estoppel, or other principles of equity which may be applicable.

SECTION 9.04. Owners' Right to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in principal amount of the Bonds then Outstanding hereunder shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture; provided, however, that so long as the Letter of Credit or any other Credit Facility is in effect with respect to a Series of Bonds and no default specified in Section 9.01(a), 9.01(b) or 9.01(c) has occurred, the Credit Bank or the issuers of any such Credit Facility shall have the right to act on behalf of the Owners of such Series of Bonds in directing such proceedings.

SECTION 9.05. Limitation on Owner's Right to Institute Proceedings. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power hereunder, or any other remedy hereunder or on the Bonds, unless (i) such Owner previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided, (ii) the Owners of a majority in principal amount of the Bonds Outstanding shall have made written request of the Trustee so to do, after the right to institute said suit, action or proceeding shall have accrued, and shall have afforded the Trustee a reasonable opportunity to proceed to institute the same in either its or their

name, (iii) there also shall have been offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and (iv) the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the institution of said suit, action or proceeding; it being understood and intended that no one or more of the Owners shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided, and that all suits, actions and proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners.

SECTION 9.06. No Impairment of Right to Enforce Payment. Notwithstanding any other provision in this Indenture, the right of any Owner to receive payment of the principal of or purchase price of and interest and any premium on his Bond, on or after the respective due dates expressed therein, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Owner.

SECTION 9.07. Proceeding by Trustee Without Possession of Bonds. All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds or the production thereof at the trial or other pro-

ceedings relative thereto. Any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Owners subject to the provisions of this Indenture.

SECTION 9.08. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or under the Agreement, or now or hereafter existing at law or in equity or by statute.

SECTION 9.09. No Waiver of Remedies. No delay or omission of the Trustee or of any Owner of a Bond to exercise any right or power accruing upon any default shall impair any such right or power accruing upon any default or shall be construed to be a waiver of any such default, or an acquiescence therein. Every power and remedy given by this Article to the Trustee and to the Owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

SECTION 9.10. Application of Moneys. Any moneys received by the Trustee, by any receiver or by any Owner of a Bond pursuant to any right given or action taken under the provisions of this Article or under the provisions of the Agreement, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys (other than moneys received from draws made on any Credit Facility), including any amounts due to the Trustee pursuant to Section 10.04, shall be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which had matured

or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default) shall be applied as follows:

(a) Unless the principal of all the Bonds shall have been declared due and payable, all such moneys shall be applied (i) first, to the payment to the persons entitled thereto of any installments of interest then due on the Bonds, with interest on overdue installments, if lawful, at the rate per annum borne by the Bonds on the date of occurrence of such Event of Default, in the order of maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, and (ii) second, to the payment to the persons entitled thereto of the unpaid principal of and any premium on any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Indenture) with interest on such Bonds at their rate on the date of occurrence of such Event of Default from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest and any premium due on such date, in each case to the persons entitled thereto, without any discrimination or privilege.

(b) If the principal of all the Bonds shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest on overdue interest and principal, as aforesaid,

without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, subject to the provisions of clause (b) of this Section which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of clause (a) of this Section.

Whatever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee or Paying Agent (at the direction of the Trustee) shall apply such funds, it shall fix the date (which shall be within five (5) days of any declaration of acceleration and, if possible, an Interest Accrual Date unless it shall deem another date more suitable) upon which such application is to be made and, upon such date, interest on the amounts of principal, premium and interest to be paid on such dates shall cease to accrue. The Registrar shall give notice of the deposit with the Paying Agent of any such moneys and of the fixing of any such date to all Owners of Outstanding Bonds, consistent with the requirements

of Section 2.01(k) for the establishment of, and giving notice with respect to, a Special Record Date for the payment of overdue interest. The Company shall provide the Registrar with a form of such notice, or if the Company shall fail to provide the Registrar with such notice, the Trustee shall provide the Registrar with the form of such notice. The Paying Agent shall not be required to make payment to any Owner of a Bond until such Bond shall be presented to the Paying Agent for appropriate endorsement or for cancellation if fully paid. Notwithstanding anything in this Indenture to the contrary, moneys received pursuant to draws on any Credit Facility shall be applied to the payment of amounts due on the Bonds of the Series for which such Credit Facility has been issued prior to applying any such moneys to the costs and expenses of obtaining such moneys, including the fees and expenses of the Trustee, Paying Agent or the Registrar or any other such entity.

SECTION 9.11. Severability of Remedies. It is the purpose and intention of this Article to provide rights and remedies to the Trustee and the Owners which may be lawfully granted under the provisions of the Act, but should any right or remedy granted herein be held to be unlawful, the Trustee and the Owners shall be entitled,as above set forth, to every other right and remedy provided in this Indenture and by law.

(End of Article IX)

ARTICLE X.

TRUSTEE; PAYING AGENT; REGISTRAR; AUTHENTICATING AGENT

SECTION 10.01. Acceptance of Trusts. The Trustee, by the execution and delivery of this Indenture, hereby accepts and agrees to execute the trusts hereby created, but only upon the terms set forth in this Article, to all of which the Issuer agrees and the Owners agree by their acceptance of delivery of any of the Bonds. Until the appointment of any additional Paying Agent, the Trustee shall also act as Paying Agent.

In order to perfect the security interest of the Trustee in the Trust Estate and to perfect the security interest in Article IV of the Agreement, financing statements, naming the Trustee as assignee and pledgee of the Trust Estate assigned and pledged under this Indenture for the payment of the principal of, premium, if any, and interest on, the Bonds and as otherwise provided herein, will be duly filed and recorded, as the case may be, in the appropriate State and county offices as required by the provisions of the Uniform Commercial Code or other similar law as adopted in the Commonwealth, as from time to time amended. To continue the security interest evidenced by such financing statements, the Trustee, at the expense of the Company, shall file and record or cause to be filed and recorded such necessary continuation statements or supplements thereto and other instruments from time to time as may be required pursuant to the provisions of said Uniform Commercial Code or other similar law to fully preserve and protect the security interest of the Trustee in the Trust Estate and to perfect the security interest in Article IV of the Agreement until the principal of,

premium, if any, and interest on the Bonds issued hereunder shall have been paid or provisions for their payment shall be made as herein provided. The Issuer, at the expense of the Company, shall execute and cause to be executed any and all instruments as shall be reasonably required for the protection and perfection of the interests of the Trustee and the Owners in the Trust Estate.

SECTION 10.02. No Responsibility for Recitals. The recitals, statements and representations contained in this Indenture or in the Bonds, save only the authentication certificate upon the Bonds, shall not be taken and construed as made by or on the part of the Trustee, the Registrar, the Paying Agent or the Authenticating Agent, and the Trustee, the Registrar, the Paying Agent and the Authenticating Agent do not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

SECTION 10.03. Limitations on Liability. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trust for its duty hereunder, and shall incur no liability in acting or proceeding in good faith upon the written opinion of any attorney reasonably believed by the Trustee to be qualified in relation to the subject matter thereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatsoever in connection with the trusts created hereby, except only for its own negligence or willful default, including that of its directors, officers, employees or agents.

SECTION 10.04. Compensation, Expenses and Advances. The Trustee (including any separate or co-trustee), the Paying Agent, the Registrar and the Authenticating Agent under this Indenture shall be entitled to reasonable compensation for their services rendered hereunder (not limited by any provision of law in regard to the compensation of the trustee of an express trust) and to reimbursement for their actual out-of-pocket expenses (including reasonable counsel fees and expenses) reasonably incurred in connection therewith except as a result of their negligence or willful default. If the Issuer shall fail to perform any of the covenants or agreements contained in this Indenture, other than the covenants or agreements in respect of the payment of the principal of and interest on the Bonds, the Trustee may, in its uncontrolled discretion and without notice to the Owners of the Bonds, at any time and from time to time, make advances to effect performance of the same on behalf of the Issuer, but the Trustee shall be under no obligation to do so; but no such advance shall operate to relieve the Issuer from any default hereunder. In Section 6.10 of the Agreement, the Company has agreed that it will pay to the Trustee, the Paying Agent, the Registrar and the Authenticating Agent such compensation and reimbursement of expenses and advances, but the Company may, without creating a default hereunder, contest in good faith the reasonableness of any such services, expenses and advances. In Section 6.10 of the Agreement, the Company has agreed to indemnify the Trustee, the Paying Agent, the Registrar and the Authenticating Agent to the extent stated therein. If the Company shall have failed to make any payment to the Trustee, the Paying Agent, the Registrar or the Authenticating Agent under Section 6.10 of the Agreement

and such failure shall have resulted in an Event of Default under the Agreement, the Trustee, the Paying Agent, the Registrar or the Authenticating Agent shall have, in addition to any other rights hereunder, a claim, prior to the claim of the Owners of the Bonds, except as to moneys received pursuant to a draw on any Credit Facility, for the payment of its compensation and the reimbursement of its expenses as provided in this Section, upon the moneys and obligations in the Bond Fund, except for moneys and obligations deposited with or paid to the Trustee for the redemption or payment of Bonds which are deemed to have been paid in accordance with Article VIII and funds held pursuant to Sections 2.02(f), 3.05(b) and 4.06 and except for moneys received pursuant to draws on any Credit Facility and moneys held by the Tender Agent in any Bond Purchase Fund.

SECTION 10.05. Notice of Events of Default. The Trustee shall not be required to take notice, or be deemed to have notice, of any default or Event of Default under this Indenture other than an Event of Default under clauses (a), (b) or (c) of the first paragraph of Section 9.01, unless specifically notified in writing of such default or Event of Default by Owners of at least a majority in principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer full information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

SECTION 10.06. Action by Trustee: Directions by Company. The Trustee shall be under no obligation to take any action in respect of any default or Event of Default hereunder or toward the execution or

enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing to do so by either the Issuer or the Owners of at least a majority in principal amount of the Bonds then Outstanding, and, if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and indemnity satisfactory to it. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provisions of this Indenture to the Trustee to take action in respect of any default or Event of Default without such notice or request from Owners, or without such security or indemnity.

Whenever after a reasonable request by the Company, the Issuer shall fail, refuse or neglect to give any direction to the Trustee or to require the Trustee to take any action which the Issuer is required to have the Trustee take pursuant to any provision of the Agreement or this Indenture, the Company, as agent of the Issuer, may give such direction to the Trustee or require the Trustee to take any such direction, and the Trustee is hereby irrevocably empowered and directed to accept such direction from the Company as sufficient for all purposes of this Indenture. The Company shall have the right, as agent of the Issuer, to cause the Trustee to comply with any of the Trustee's obligations under the Indenture to the same extent that the Issuer is empowered so to do.

Certain actions or failures to act by the Issuer under this Indenture may create or result in an Event of Default hereunder and the Company, as agent of the Issuer, may, to the extent permitted by law, perform

any and all acts or take such action as may be necessary for and on behalf of the Issuer to correct any such Event of Default and the Trustee shall take or accept such performance by the Company as performance by the Issuer.

The Issuer hereby makes, constitutes and appoints the Company irrevocably as its agent to give all directions, do all things, and perform all acts provided, and to the extent so provided, by this Section.

SECTION 10.07. Good Faith Reliance. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document, or upon telephonic instructions to the extent the giving of telephonic instructions is specifically authorized by this Indenture or the Agreement, in any case which the Trustee shall in good faith believe to be genuine and to have been passed, signed or given by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Agreement, or upon the written opinion of any attorney, engineer, accountant or other expert believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. Neither the Trustee, the Paying Agent, the Registrar, the Authenticating Agent, the Tender Agent nor the Remarketing Agent shall be bound to recognize any person as an Owner or to take any action at his request unless his Bond shall be

deposited with such entity or satisfactory evidence of the ownership of such Bond shall be furnished to such entity.

SECTION 10.08. Dealings in Bonds and with the Issuer and the Company. The Trustee, the Paying Agent, the Credit Bank, the Registrar, the Authenticating Agent, the Tender Agent or the Remarketing Agent, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Owner may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, the Paying Agent, the Registrar, the Authenticating Agent, the Credit Bank, the Tender Agent or the Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Company, and may act as depositary, trustee or agent for any committee or body of Owners or other obligations of the Issuer as freely as if it did not act in any capacity hereunder.

SECTION 10.09. Several Capacities. Anything in this Indenture to the contrary notwithstanding, the same entity may serve hereunder as the Trustee, the Paying Agent, the Registrar, the Authenticating Agent, the Tender Agent and the Remarketing Agent and in any other combination of such capacities, to the extent permitted by law.

SECTION 10.10. Construction of Indenture: Existence of Facts. The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any contruction of any such provisions hereof by the Trustee in good faith shall be binding upon the Owners. As to the existence

or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer by its Chairman and attested by its Secretary-Treasurer under its seal, or such other person or persons as may be designated for such purposes by resolution of the Issuer, as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in Section 10.05, or of which by said Section it is deemed to have notice, may also accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Secretary-Treasurer of the Issuer under its seal to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

SECTION 10.11. Resignation of Trustee. The Trustee may resign and be discharged of the trusts created by this Indenture by executing an instrument in writing resigning such trust and specifying the date when such resignation shall take effect, and filing the same with the Issuer, the Company, the Paying Agent, the Registrar, the Tender Agent, the Remarketing Agent and the Authenticating Agent, and by giving notice of such resignation to all Owners. Such resignation shall take effect on the day a successor Trustee shall have been appointed as hereinafter provided and shall have accepted such appointment.

SECTION 10.12. Removal of Trustee. The Trustee may be removed at any time by filing with the Trustee so removed, the Issuer, the Company, the Paying Agent, the Registrar, the Authenticating Agent, the Tender Agent and the Remarketing Agent an instrument or instruments in writing, appointing a successor, or an instrument or instruments in writing, consenting to the appointment by the Issuer of a successor (and accompanied by an instrument of appointment by the Issuer), and in any event, executed by Owners of not less than a majority in principal amount of the Bonds then Outstanding. Promptly upon receipt of such instrument or instruments, the Trustee shall give notice thereof to all Owners.

SECTION 10.13. Appointment of Successor Trustee. If at any time the Trustee shall be removed, be dissolved or its property or affairs shall be taken under the control of any state or federal court or administrative body because of insolvency, bankruptcy or any other reason, a vacancy shall ipso facto be deemed to exist in the office of Trustee and a successor may be appointed, and in case at any time the Trustee shall resign, then a successor may be appointed, by filing with the Issuer, the Company, the Paying Agent, the Registrar, the Authenticating Agent, the Tender Agent and the Remarketing Agent an instrument of appointment in writing, executed by Owners of not less than a majority in principal amount of Bonds then Outstanding. Copies of such instrument shall be promptly delivered by the Issuer to the predecessor Trustee and to the Trustee so appointed.

Until a successor Trustee shall be appointed by the Owners of the Bonds as herein authorized, the

Issuer, by an instrument authorized by resolution of the governing body of the Issuer, shall appoint a successor Trustee acceptable to the Company. After any appointment by the Issuer, it shall cause notice of such appointment to be given to the Paying Agent, the Registrar, the Authenticating Agent, the Tender Agent, the Remarketing Agent and to all Owners of the Bonds. Any new Trustee so appointed by the Issuer shall immediately and without further act be superseded by a Trustee appointed by the Owners of the Bonds in the manner above provided.

SECTION 10.14. Qualifications of Trustee and Successor Trustee. The Trustee is, and every successor Trustee shall be, a corporation or association duly organized and existing under the laws of the United States of America or any state or territory thereof and authorized by law to perform all the duties imposed upon it by this Indenture, and shall be (a) a bank or trust company, (b) a wholly-owned subsidiary of a bank or trust company, or (c) a wholly-owned subsidiary of a bank holding company the principal banking subsidiary of which is a bank or trust company, which bank or trust company, in case of (a), (b) or (c) of this Section, has a reported capital and surplus of not less than $50,000,000, if there be such an institution willing, qualified and able to accept the trusts imposed under this Indenture upon reasonable or customary terms.

SECTION 10.15. Judicial Appointment of Successor Trustee. If at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation is to take effect, the retiring Trustee may forthwith apply to a court of

competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within six (6) months after a vacancy shall have occurred in the office of Trustee, any Owner of a Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

SECTION 10.16. Acceptance of Trusts by Successor Trustee. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trusts, duties and obligations of its predecessor in the trusts hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, such predecessor Trustee and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of such predecessor Trustee and, subject to the provisions of Section 10.04, such predecessor Trustee shall pay over to the successsor Trustee all moneys and other assets at the time held *by* it hereunder.

SECTION 10.17. Successor by Merger or Consolidation. Any corporation into which any Trustee hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, shall be the successor Trustee under this Indenture, without the execution

or filing of any paper or any further act on the part of the parties hereto, anything in this Indenture to the contrary notwithstanding.

SECTION 10.18. Standard of Care. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Defaults which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied agreements or obligations shall be read into this Indenture against the Trustee. Notwithstanding any other provisions of this Article, the Trustee shall, during the existence of an Event of Default of which the Trustee has actual notice or is deemed to have notice, exercise such of the rights and powers vested in it by this Indenture and use the same degree of skill and care in their exercise as a prudent person would use and exercise under the, circumstances in the conduct of his own affairs.

SECTION 10.19. Notice of Event of Default. If an Event of Default occurs of which the Trustee by Section 10.05 hereof is required to take notice or deemed to have notice, or any other Event of Default occurs of which the Trustee has been specifically notified in accordance with Section 10.05, and any such Event of Default shall continue for at least two (2) days after the Trustee acquires actual notice thereof, the Trustee shall give notice thereof to the Issuer, the Remarketing Agent, the Tender Agent, the Authenticating Agent, the Paying Agent, the Registrar and the Owners of the Bonds.

SECTION 10.20. Intervention in Litigation. In any judicial proceeding which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Owners of the Bonds, the Trustee

may intervene on behalf of the Owners of the Bonds and shall, upon receipt of indemnity satisfactory to it, do so if requested in writing by the Owners of at least a majority in principal amount of the Bonds then Outstanding if permitted by a court having jurisdiction in the premises.

Section 10.21. Paying Agent. The Issuer shall, with the approval of the Company, appoint the Paying Agent for each Series of Bonds, subject to the conditions set forth in Section 10.22. Each Paying Agent shall designate to the Trustee its Principal Office (other than the Trustee, which shall also be the Paying Agent designated for the 1992 Series A and B Bonds whose principal office is listed in Section 14.08) and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Company and the Trustee under which such Paying Agent will agree, particularly:

(a) to hold all sums held by it for the payment of the principal of and interest and any premium on any Series of Bonds for which such Paying Agent has been appointed in trust for the benefit of the Owners until such sums shall be paid to the Owners or otherwise disposed of as herein provided; and

(b) to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer, the Trustee and the Company at all reasonable times.

The Issuer shall cooperate with the Trustee and the Company to cause the necessary arrangements to be made and to be thereafter continued whereby funds will be made available for the payment when due of

the Bonds as presented at the Principal Office of the Paying Agent.

SECTION 10.22. Qualifications of Paving Agent: Resignation; Removal. The Paying Agent shall be the Trustee or a bank, a trust company or another corporation duly organized under the laws of the United States of America or any state or territory thereof, and, in the case of a corporation other than a bank or a trust company and for so long as the Bonds shall be rated by Moody's, having senior unsecured debt rated at least Baa3 or otherwise qualified by Moody's, and in each case, having a combined capital stock, surplus and undivided profits of at least $15,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture., Subject to the next succeeding paragraph, the Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer, the Company, the Registrar and the Trustee. Subject to the next succeeding paragraph, the Paying Agent may be removed at any time, at the direction of the Company, by an instrument signed by the Issuer, filed with the Registrar, the Tender Agent, the Authenticating Agent, the Paying Agent and the Trustee.

Upon the resignation or removal of the Paying Agent, the Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there be no successor, to the Trustee. No such resignation or removal shall be effective until a successor has been appointed and accepted such duties.

If the Paying Agent shall resign, be removed or be dissolved, or if the property or affairs of the Paying Agent shall be taken under the control of any state or

federal court or administrative body because of bankruptcy, insolvency or any other reason, and the Issuer shall not have appointed its successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the Issuer or the Paying Agent or successor Paying Agent, as the case may be.

SECTION 10.23. Registrar. The Issuer shall, with the approval of the Company, appoint the Registrar for each Series of Bonds, subject to the conditions set forth in Section 10.24. Each Registrar shall designate to the Trustee its Principal Office (other than the inital Registrar for the 1992 Series A and B Bonds whose Principal Office is listed in Section 14.08) and signify its acceptance of the duties imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Company and the Trustee under which such Registrar will agree, particularly, to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer, the Trustee and the Company at all reasonable times.

The Issuer shall cooperate with the Trustee and the Company to cause the necessary arrangements to be made and to be thereafter continued whereby Bonds, executed by the Issuer and authenticated by the Registrar or the Authenticating Agent, shall be made available for exchange or registration of transfer at the Principal Office of the Registrar or the Authenticating Agent. The Issuer shall cooperate with the Trustee, the Registrar and the Company to cause the necessary arrangements to be made and thereafter continued whereby the Paying Agent and the Remarketing Agent shall be furnished such

records and other information, at such times, as shall be required to enable the Paying Agent and the Remarketing Agent to perform the duties and obligations imposed upon them hereunder.

SECTION 10.24. Qualifications of Registrar: Resignation; Removal. The Registrar shall be the Trustee or a corporation duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least $15,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the next paragraph, the Registrar may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer, the Trustee, the Authenticating Agent and the Company. Subject to the next paragraph, the Registrar may be removed at any time, at the direction of the Company, by en instrument, signed by the Issuer, filed with the Registrar, the Tender Agent, the Paying Agent, the Authenticating Agent and the Trustee.

Upon the resignation or removal of the Registrar, the Registrar shall deliver any Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee. No such resignation or removal shall be effective until a successor has been appointed and has accepted such duties.

If the Registrar shall resign, be removed or be dissolved, or if the property or affairs of the Registrar shall be taken under the control of any state or federal court or administrative body because of bankruptcy, insolvency or any other reason, and the Issuer shall not have appointed its successor as Registrar, the Trustee shall ipso facto be deemed to be the

Registrar for all purposes of this Indenture until the appointment by the Issuer of the Registrar or successor Registrar, as the case may be.

SECTION 10.25. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the Commonwealth) denying or restricting the right of banking corporations or associations to transact business as trustees in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Agreement, and in particular in the case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee.

If the Trustee shall appoint an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee, but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Issuer be required by the separate or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such estates, property, rights, power, trust, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee or a new separate or co-trustee.

SECTION 10.26. Designation and Succession of Authenticating Agents. The Registrar for the 1992 Series A and B Bonds is hereby designated as an Authenticating Agent for the Bonds. The principal office of the Authenticating Agent for the 1992 Series A and B Bonds at which its responsibilities and duties will be carried out shall mean the address set forth in Section 14.06, or such other office thereof designated in writing to the Issuer, the Trustee, the Registrar, the Paying Agent, the Company, the Tender Agent and the Remarketing Agent. With the consent of the Company, the Trustee may appoint an additional Authenticating Agent or Agents for the 1992 Series A and B Bonds, in addition to the Registrar, for the 1992 Series A and B Bonds, with power to act on its behalf and subject to its direction in the authentication and delivery of 1992 Series A and B Bonds in connection with transfers and exchanges under Sections 2.07, 2.08 and 3.02. For all purposes of this Indenture, the authentication and delivery of Bonds by an Authenticating Agent pursuant to this

Section shall be deemed to be authentication and delivery of those Bonds by the Registrar". An Authenticating Agent or Agents with respect to an Additional Series of Bonds shall be appointed pursuant to the Supplemental Indenture providing for the issuance of such Additional Series of Bonds.

The Authenticating Agent shall be the Trustee, the Registrar, or a bank, a trust company or other corporation duly organized under the laws of the United States of America or any state or territory thereof, and, in the case other than a bank or a trust company (other than the Trustee) and so long as the Bonds shall be rated by Moody's, having senior unsecured debt rated at least Baa3 or otherwise qualified by Moody's, and in each case, having a combined capital stock, surplus and undivided profits of at least $15,000,000 and authorized by law to perform all of the duties imposed upon it by this Indenture. Subject to the next succeeding paragraph, the Authenticating Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer, the Company, the Registrar and the Trustee. Subject to the next succeeding paragraph, the Authenticating Agent may be removed at any time, at the direction of the Company, by an instrument signed by the Issuer, and filed with the Registrar, the Tender Agent, the Paying Agent, the Authenticating Agent and the Trustee.

Upon the resignation or removal of the Authenticating Agent, the Authenticating Agent shall deliver any Bonds not yet authenticated by the Authenticating Agent and held by it in such capacity to its successor or, if there be no successor, to the Registrar or to the Trustee. No such resignation or removal

shall be effective unless and until a successor has been appointed and accepted such duties, if the Trustee or the Registrar shall not then be acting as Authenticating Agent.

If the Authenticating Agent shall resign, be removed or be dissolved, or if the property or affairs of the Authenticating Agent shall be taken under control of any state or federal court or administrative body because of bankruptcy, insolvency or any other reason, and the Issuer shall not have appointed its successor as Authenticating Agent, the Trustee shall ipso facto be deemed to be the Authenticating Agent for all purposes of this Indenture until the appointment by the Issuer of an Authenticating Agent of a successor Authenticating Agent, as the case may be.

The Company has agreed in the Agreement to pay to any Authenticating Agent from time to time reasonable compensation for its services.

The provisions of Sections 10.02, 10.03 and 10.07 shall be applicable to any Authenticating Agent.

(End of Article X)

ARTICLE XI

EXECUTION OF INSTRUMENTS BY OWNERS AND PROOF OF OWNERSHIP OF BONDS

SECTION 11.01. Execution of Instruments; Proof of Ownership. Subject to Section 14.05, any request, direction, consent or other instrument in writing, whether or not required or permitted by this Indenture to be signed or executed by Owners of the Bonds, may be in any number of concurrent instruments of similar tenor and may be signed or executed by Owners of the Bonds in person or by agents appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership or former ownership of Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) the fact and date of the execution by any person of, any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution, or in any other manner reasonably acceptable to the Trustee; and

(b) the ownership or former ownership of Bonds shall be provided by the registration books kept under the provisions of Section 2.08 and the records kept by the Registrar pursuant to Section 13.03 (c) (i).

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other

evidence of matters herein stated which it may deem to be sufficient. Any request or consent of any Owner of a Bond shall bind every future Owner of any Bond or Bonds issued in lieu thereof in respect of anything done by the Trustee or the Issuer in pursuance of such request or consent.

(End of Article XI)

ARTICLE XII

MODIFICATION OF THIS INDENTURE AND THE AGREEMENT

SECTION 12.01. Limitations. Neither this Indenture nor the Agreement shall be modified or amended in any respect subsequent to the Date of Issuance of any Series of Bonds hereunder, except as provided in and in accordance with and subject to the provisions of this Article. The Trustee shall not be obligated to enter into or' consent to any Supplemental Indenture or any modification, alteration, amendment or supplement to the Agreement which affects the duties, liabilities and immunities of the Trustee hereunder or the rights of the Trustee under Article X.

SECTION 12.02. Supplemental Indenture without Consent of Owners. The Issuer may, and, subject to the provisions of Section 12.01 the Trustee shall, from time to time and at any time, without the consent of or notice to the Owners of the Bonds enter into Supplemental Indentures as follows:

(a) to cure any defect, omission, inconsistency or ambiguity in this Indenture;

(b) to grant to or confer or impose upon the Trustee for the benefit of the Owners of the Bonds any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(c) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in this Indenture, other covenants, agreements, limitations and restrictions to be observed by the Issuer which

are not contrary to or inconsistent with this Indenture as theretofore in effect;

(d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Receipts and Revenues or of any other moneys, securities or funds;

(e) to authorize different Authorized Denominations of the Bonds and to make correlative amendments and modifications to this Indenture regarding exchangeability of Bonds of different Authorized Denominations, redemptions of portions of Bonds of particular Authorized Denominations and similar amendments and modifications of a technical nature;

(f) to modify, alter, supplement or amend this Indenture in such manner as shall permit the qualification hereof under the Trust Indenture Act of 1939, as from time to time amended;

(g) to modify, alter, amend or supplement this Indenture in any other respect which is not materially adverse to the Owners and which does not involve a change described in the provisions of Section 12.03(a)(i)-(iv);

(h) to modify, alter, supplement or amend this Indenture to comply with changes in the Code affecting the tax-exempt status of the Bonds or the obligations of the Issuer or the Company in respect of Section 148 of the Code (or any successor provision thereof);

(i) to provide for the issuance of various Series of Additional Bonds;

(j) to make changes required to obtain Bond ratings from Moody's and from S&P.

(k) to make changes, modifications, amendments, additions or deletions to facilitate the use of the book-entry system or as may be required to permit the Bonds to be registered pursuant to, or to facilitate the use of, a book-entry system;

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

SECTION 12.03. Supplemental Indenture with Consent of Owners.

(a) Except for any Supplemental Indenture entered into pursuant to Section 12.02, subject to the terms and provisions contained in this Section, the Owners of not less than a majority in aggregate Outstanding principal amount of the Bonds shall have the right from time to time to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplemental. Indenture deemed necessary or desirable by the Issuer for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this Indenture; provided, however, that, unless approved in writing by the Owners of all the Bonds, nothing herein contained shall permit, or be construed as permitting, (i) a change in the times, amounts or currency of payment of the principal of or interest or any premium on any Bond, change in the

terms of the purchase of Series of Bonds pursuant to Section 2.02 (other than as permitted by Section, 12.02(g)), or a reduction in the principal amount or redemption price of any Bond or a change in principal amount or redemption price of any Bond or a change in the method of determining the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge of, the Receipts and Revenues ranking prior to the claim, lien or pledge created by this Indenture, or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of Bonds the consent of the Owners of which is required for any such Supplemental Indenture or which is required, under Section 12.07, for any modification, alteration, amendment or supplement to the Agreement.

(b) If at any time the Issuer shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed Supplemental Indenture to be given to all Owners of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that a copy thereof is on file at the office of the Trustee for inspection by all Owners of the Bonds.

(c) Within two (2) years after the date of the giving of such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice, but only if there shall have first been delivered to the Trustee (i) the required consents, in writing, of the Owners of the Bonds and (ii) an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms, and, upon the execution

and delivery thereof, will be valid and binding upon the Issuer in accordance with its terms and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(d) If Owners of not less than the percentage of Bonds required by this Section shall have consented to and approved the execution and delivery thereof as herein provided, no Owner shall have any right to object to the execution and delivery of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution and delivery thereof, or to enjoin or restrain the Issuer or the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

SECTION 12.04. Effect of Supplemental Indenture. Upon the execution and delivery of any Supplemental Indenture pursuant to the provisions of this Article, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Owners of Bonds then Outstanding shall hereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

SECTION 12.05. Consent of the Company. No Supplemental Indenture shall become effective unless and until the Company shall have consented thereto in writing.

SECTION 12.06. Amendment of Agreement or Guaranty without Consent of Owners. Without the consent of or notice to the owners of the Bonds, the

Issuer may modify, alter, amend or supplement the Agreement, including the exhibits and attachments thereto, and the Trustee shall consent thereto (unless such consent specifically is not required by the Agreement), (i) as may be required by the provisions of the Agreement and the Indenture, (ii) for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein, or (iii) in connection with any other change therein which is not materially adverse to the owners of the Bonds.

The Issuer shall not enter into, and the Trustee shall not consent to, any amendment, alteration, modification of or supplement to the Agreement other than as described in the preceding paragraph, without the written approval or consent of the owners of not less than a majority in aggregate principal amount of the Bonds then outstanding; provided that, unless approved in writing by the owners of all Bonds then outstanding, no change in the obligations of the Company under the Agreement relating to payments of the principal of and premium, if any, and interest on the Bonds may be made.

Without the consent of or notice to the owners of the 1992 Series A and B Bonds, the Company and the Trustee may modify, alter, amend or supplement the Guaranty, (i) as may be required by the provisions of the Guaranty and the Indenture, (ii) for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein, or (iii) in connection with any other change therein which is not materially adverse to the owners of the 1992 Series A and B Bonds.

The Company and the Trustee shall not enter into any amendment, alteration, modification of or supplement to the Guaranty other than as described in the preceding paragraph, without the written

approval or consent of the owners of not less than a majority in aggregate principal amount of the 1992 Series A and B Bonds then outstanding; provided that, unless approved in writing by the owners of all 1992 Series A and B Bonds then outstanding, no change in the obligations of the Company under the Guaranty relating to payments of the principal of and premium, if any, and interest on the 1992 Series A and B Bonds may be made.

SECTION 12.07. Amendment of Agreement or Guaranty with Consent of Owners. Except in the case of modifications, alterations, amendments or supplements referred to in Section 12.06, the Issuer shall not enter into, and the Trustee shall not consent to, any amendment, alteration, modification of or supplement to the Agreement or the Guaranty, without the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, given and procured as provided in Section 12.03, provided, however, that, unless approved in writing by the Owners of all Bonds then Outstanding, nothing in this Section contained shall permit, or be construed as permitting, a change in the obligations of the Company under Section 4.03 of the Agreement. If at any time the Issuer or the Company shall request the consent of the Trustee to any such proposed modification, alteration, amendment or supplement of the Agreement or the Guaranty, the Registrar shall cause notice thereof to be given in the same manner as provided by Section 12.03 with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed modification, alteration, amendment or supplement and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all

Owners of Bonds Outstanding. The Issuer may enter into, and the Trustee may consent to, any such proposed modification, alteration, amendment or supplement of the Agreement or Guaranty, subject to the same conditions and with the same effect as provided in Section 12.03 with respect to Supplemental Indentures.

(End of Article XII)

ARTICLE XIII

REMARKETING AGENT; TENDER AGENT; PURCHASE AND REMARKETING OF BONDS

SECTION 13.01 Remarketing Agent and Tender Agent.

(a) The initial Remarketing Agent for the 1992 Series A and B Bonds (to the extent required) shall be Smith Barney, Harris Upham & Co. Incorporated. The Company shall, with the consent of the Issuer, appoint any successor Remarketing Agent for the 1992 Series A and B Bonds, subject to the conditions set forth in Section 13.02(a). Each Remarketing Agent shall designate its Principal Office (other than the initial Remarketing Agent for the 1992 Series A and B Bonds whose Principal Office is listed in Section 14.08) and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Trustee, the Registrar, the Authenticating Agent, the Tender Agent, the Credit Bank and the Company under which the Remarketing Agent will agree, particularly, to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer, the Trustee, the Registrar, the Tender Agent and the Company at all reasonable times.

(b) If the 1992 Series A and/or B Bonds shall be converted to Bonds bearing interest at Weekly Interest Rates or Bond Interest Term Rates, a Tender Agent shall thereupon be appointed. Tender Agents shall be appointed for Series of Additional Bonds, as appropriate. The Company shall appoint any successor Tender Agent for the 1992 Series A and B Bonds, or any relevant Series of Additional Bonds, subject to

the conditions set forth in Section 13.02(b). Each Tender Agent shall designate its Principal Office(s) for delivery of notices and delivery of Bonds (except for such offices of the initial Tender Agent for the 1992 Series A and B Bonds which are listed in Section 14.08 hereof) and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Trustee, the Registrar, the Authenticating Agent, the Company, the Credit Bank and the Remarketing Agent. By acceptance of its appointment hereunder, the Tender Agent agrees (and any Tender Agent with respect to Series of Additional Bonds shall agree):

(i) to hold all 1992 Series A and B Bonds and other Series of Bonds delivered to it pursuant to Section 2.02, as agent and bailee of, and in escrow for the benefit of, the respective Owners which shall have so delivered such 1992 Series A and B Bonds and other Series of Bonds until moneys representing the purchase price of such 1992 Series A and B Bonds shall have been delivered to or for the account of or to the order of such Owners;

(ii) to establish and maintain two separate segregated trust funds designated as the (i) "Kenton County Airport Board Special Facilities Adjustable Tender Revenue Bonds, 1992 Series A (Delta Air Lines, Inc. Project) Bond Purchase Fund" and (ii) "Kenton County Airport Board Special Facilities Adjustable Tender Revenue Bonds, 1992 Series B (Delta Air Lines, Inc. Project) Bond Purchase Fund" (the "Bond Purchase Funds") until such time as it has been discharged from its duties as Tender Agent hereunder and to create and maintain similar bond purchase funds in respect of Series of Additional Bonds;

(iii) to hold all moneys (without investment hereof) delivered to it hereunder in the Bond Purchase Funds for the purchase of 1992 Series A and B Bonds and other Series of Bonds pursuant to Section 2.02, as agent and bailee of, and in escrow for the benefit of, the person or entity which shall have so delivered such moneys until the 1992 Series A and B Bonds and other Series of Bonds purchased with such moneys shall have been delivered to or for the account of such person or entity;

(iv) to hold all moneys delivered to it by the Company for the purchase of 1992 Series A and B Bonds and other Series of Bonds pursuant to Section 2.02, as agent and bailee of, and in escrow for the benefit of, the Owners who shall deliver 1992 Series A and B Bonds and other Series of Bonds to it for purchase until the Bonds purchased with such moneys shall have been delivered to or for the account of the Company; provided, however, that if the 1992 Series A and B Bonds and other Series of Bonds shall at any time become due and payable, the Tender Agent shall cause such moneys (other than moneys held pursuant to Section 13.03(c)(ii)) to be deposited into the Bond Fund;

(v) to hold all 1992 Series A and B Bonds and other Series of Bonds registered in the name of the new Owners thereof which have been delivered to it by the Registrar for delivery to the Remarketing Agent in accordance with the Tender Agreement;

(vi) to hold 1992 Series A and B Bonds and other Series of Bonds for the account of the Company as contemplated by Section 13.05(c); and

(vii) to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection

by the Issuer, the Trustee, the Company and the Remarketing Agent at all reasonable times.

The Issuer shall cooperate with the Company, the Trustee and the Registrar to cause the necessary arrangements to be made and to be thereafter continued to enable the Tender Agent to perform its duties and obligations described above.

SECTION 13.02. Qualifications of Remarketing Agent and Tender Agent: Resignation: Removal.

(a) The Remarketing Agent shall be a member of the National Association of Securities Dealers, having a combined capital stock, surplus and undivided profits of at least $15,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture. Any successor Remarketing Agent shall have senior unsecured long-term debt which shall be rated, so long as the Bonds shall be rated by Moody's, at least Baa3/P-3 or otherwise qualified by Moody's. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving notice to the Issuer, the Trustee, the Registrar, the Tender Agent, the Authenticating Agent, the Credit Bank and the Company. Such resignation shall take effect on the 45th day after the receipt by the Issuer and the Company of the notice of resignation. The Remarketing Agent may be removed at any time on 45 days prior written notice, by an instrument signed by the Company, filed with the Remarketing Agent, the Issuer, the Trustee, the Registrar, the Tender Agent and the Authenticating Agent.

(b) The Tender Agent shall be a corporation duly organized under the laws of the United States of America or any state or territory thereof, and, if not a

bank or trust company, for so long as the Bonds shall be rated by Moody's, shall have senior unsecured debt which shall be rated at least Baa3/P-3 or otherwise qualified by Moody's, and in any case having a combined capital stock, surplus and undivided profits of at least $15,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture and the Tender Agreement. The Tender Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice to the Issuer, the Trustee, the Registrar, the Company, the Authenticating Agent; the Credit Bank and the Remarketing Agent. The Tender Agent may be removed at any time by an instrument signed by the Company, filed with the Tender Agent, the Issuer, the Trustee, the Registrar, the Authenticating Agent and the Remarketing Agent. Such resignation or removal shall take effect on the day a successor Tender Agent shall have been appointed by the Company and shall have accepted such appointment.

Upon the effective date of resignation or removal of the Tender Agent, the Tender Agent shall deliver any Bonds and moneys held by it in such capacity to its successor.

SECTION 13.03. Notice of Bonds Delivered for Purchase; Purchase of Bonds.

(a) The Tender Agent for a Series of Bonds shall determine timely and proper delivery of such Bonds pursuant to this Indenture and the proper endorsement of such Bonds. Such determination shall be binding on the Owners of such Bonds, the Issuer, the Company, the Remarketing Agent and the Trustee, absent manifest error. In accordance with the provisions of the Tender Agreement, the Tender Agent

shall give notice by telephone, telecopy or telex promptly confirmed by a written notice, to the Trustee, the Registrar, the Remarketing Agent, the Credit Bank and the Company specifying the principal amount of such Bonds, if any, as to which it shall receive notice of tender for purchase in accordance with Sections 2.02(a).

(b) Bonds of a Series required to be purchased in accordance with Section 2.02 shall be purchased from the Owners thereof, on the date and at the purchase price at which such Bonds are required to be purchased. Funds for the payment of such purchase prices shall be derived from the following sources in the order of priority indicated:

(i) proceeds of the sale of such Bonds remarketed to any person pursuant to Section 13.04 and furnished to the Tender Agent by the Remarketing Agent for deposit into the Remarketing Account of the Bond Purchase Fund;

(ii) moneys furnished by the Trustee to the Tender Agent for deposit into the Credit Bank Account of the Bond Purchase Fund representing moneys received from draws on the Credit Facility; and

(iii) moneys furnished by the Trustee to the Tender Agent for deposit into the Company Account of the Bond Purchase Fund representing moneys provided to the Trustee by the Company.

In the event that a premium is required to be paid upon the purchase of any Bond of a Series as provided in Section 2.02(d), and the Credit Facility then in effect with respect to the Bonds of such Series shall not provide for the payment of a premium upon the purchase of a Bond of such Series, then moneys derived from draws on such Credit Facility shall be

applied solely to the payment of principal and interest on such Bonds and not to the payment of any such premium.

The Tender Agent for a Series of Bonds may establish separate accounts or subaccounts within the Bond Purchase Fund for such purposes as the Tender Agent may deem appropriate.

(c) (i) The Registrar or the Authenticating Agent for a Series of Bonds shall authenticate a new Bond or Bonds of such Series in an aggregate principal amount equal to the principal amount of Bonds purchased in accordance with Section 13.03(b), whether or not the Bonds of such Series so purchased are presented by the Owners thereof, bearing a number or numbers not contemporaneously outstanding. Every Bond authenticated and delivered as provided in this Section shall be entitled to all the benefits of this Indenture equally and proportionally with any and all other Bonds of such Series duly issued hereunder. The Registrar shall maintain a record of the Bonds of such Series purchased as provided in this Section 13.03, together with the names and addresses of the former Owners thereof.

(ii) In the event any Bonds of a Series purchased as provided in this Section 13.03 shall not be presented to the Tender Agent for such Series, the Tender Agent shall segregate and hold the moneys for the purchase price of such Bonds in trust for the benefit of the former Owners of such Bonds, who shall, except as provided in the following sentence, thereafter be restricted exclusively to such moneys for the satisfaction of any claim for the purchase price of such Bonds. Any moneys which the Tender Agent shall segregate and hold in trust for the payment of the purchase price of any such Bond and

remaining unclaimed for two years after the date of purchase shall, upon the Company's written request to the Tender Agent, be paid to the Credit Bank, if any, for such Series of Bonds to the extent such Credit Bank has not been reimbursed under the Credit Facility for such Series for a draw relating to such purchase, and thereafter to the Company The Tender Agent shall be entitled to rely conclusively on a certificate of an officer of the Credit Bank in determining the extent to which the Credit Bank has not been reimbursed for such draws. After the payment of such unclaimed moneys to the Credit Bank or to the Company, the former Owners of such Bond shall look only to the Company for the payment thereof.

SECTION 13.04. Remarketing of Bonds of Interest Rates.

(a) Upon notice of the tender for purchase of Bonds of a Series, the Remarketing Agent shall offer for sale and use its best efforts to sell such Bonds, any such sale to be made on the date of such purchase in accordance with Section 2.02 at the best price available in the marketplace at the principal amount thereof, plus accrued interest, if any, to the purchase date. Any Bond which is tendered for purchase, pursuant to Sections 2.02(a) after that Bond has become subject to mandatory tender for purchase pursuant to Sections 2.02(c) or 2.02(d), shall be sold by the related Remarketing Agent only to a purchaser who agrees in writing to (i) refrain from selling such Bond other than under the terms of this Indenture or (ii) hold that Bond only to the date of mandatory purchase. Each Remarketing Agent agrees that it shall not sell any Bonds purchased pursuant to Section 2.02 to the Company or the Issuer, or to any person who controls, is controlled by,

or is under common control with, the Issuer or the Company.

(b) The Remarketing Agent for a Series of Bonds shall determine the rate of interest to be borne by such Bonds during each Interest Rate Period for such Bonds and by each Bond of such Series during each Bond Interest Term for such Bond and the Bond Interest Terms for each Bond of such Series during each Short-Term Interest Rate Period as provided in Section 2.01 and shall furnish to the Trustee, the Company and the related Registrar on the Business Day of determination each rate of interest and Bond Interest Term so determined by telex, telephone or telecopy, promptly confirmed in writing.

(c) The Remarketing Agent for a Series of Bonds shall give telephonic or telegraphic notice, promptly confirmed by a written notice, to the Trustee, the Registrar, the Authenticating Agent and the related Tender Agent on each date on which Bonds of such Series shall have been purchased pursuant to Section 13.03 (b), specifying the principal amount of Bonds of such Series, if any, sold by it pursuant to Section 13.04(a) along with a list of such purchasers showing the names and denominations in which such Bonds shall be registered, and the addresses and social security or taxpayer identification numbers of such purchasers.

SECTION 13.05. Delivery of Bonds.

(a) Bonds purchased with moneys described in clause (i) of Section 13.03(b) shall be made available by the related Tender Agent to the related Remarketing Agent for delivery to the purchasers thereof against payment therefor in accordance with the Tender Agreement.

(b) Bonds purchased with moneys described in clause (ii) of Section 13.03(b) shall be held by the related Tender Agent as Escrow Bonds pursuant to the Tender Agreement.

(c) Bonds purchased with moneys described in clause (iii) of Section 13.03(b) shall be held by the related Tender Agent for the account of the Company as Escrow Bonds pursuant to the Tender Agreement.

(d) Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

SECTION 13.06. Delivery of Proceeds of Sale. The proceeds of the sale by the Remarketing Agent of any Bonds delivered to it by, or held by it for the account of, the Company, or delivered to it by any other Owner, shall be turned over to the related Tender Agent as provided in the Tender Agreement.

SECTION 13.07. Draws on Credit Facility to Pay Purchase Price. The Trustee, on each day on which Bonds of a Series are required to be purchased pursuant to Section 2.02, is hereby directed to make drawings under the Credit Facility if any, with respect to such Series, in accordance with the provisions of the related Tender Agreement or other governing document, the procedures of which are incorporated herein by reference, by such times and in such manner as shall be required to receive in immediately available funds on such date to pay the purchase price plus accrued interest, if any, of Bonds of such Series then payable from the Credit Facility tendered for purchase or required to be purchased pursuant to the provisions of this Indenture, at the times, on the dates, to the extent, and in the manner herein and in the related Tender Agreement or other

governing document, provided, and to deposit the proceeds of such drawings or cause such proceeds to be deposited in the Bond Purchase Fund for such Series pending application of such moneys to the payment of the purchase price of such Bonds. In determining the amount of any such purchase price then due, the Trustee shall not take into consideration any purchase price due on Escrow Bonds and no drawings under the Credit Facility shall be made or be used to pay the purchase price of any Escrow Bonds.

(End of Article XIII)

ARTICLE XIV

MISCELLANEOUS

SECTION 14.01. Successors of the Issuer. Upon the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained, by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

SECTION 14.02. Parties in Interest. Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the Issuer, the Company, the Trustee and the Owners, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer, the Company, the Trustee and the Owners of the Bonds.

SECTION 14.03. Severability. In case any one or more of the provisions of this Indenture or of the Bonds shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Indenture or of the Bonds, and this Indenture and the Bonds shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

SECTION 14.04. Immunity of Directors, Members, Officers and Employees of Issuer. No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained in the Agreement, this Indenture or in any Bond issued

hereunder for any claim based thereon or otherwise in respect thereof, against any director, member, officer or employee, as such, in his individual capacity, past, present or future, of the Issuer or of any successor, whether by virtue of any constitutional provisions. statute or rule of law, or by the enforcement of any assignment or penalty or otherwise; it being expressly agreed and understood that the Bonds, the Agreement and this Indenture are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, member, officer or employee, as such, past, present or future, of the Issuer or of any successor, either directly or through the Issuer or any successor, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Company whether contained in the Agreement or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, member, officer and employee is, by the execution of the Agreement and this Indenture, and as a condition of, and as a part of the consideration for, the execution of the Agreement and this Indenture, expressly waived and released.

SECTION 14.05. Bonds Owned by the Issuer or the Company. In determining whether Owners of the requisite aggregate principal amount of the Bonds of a Series or Bonds Outstanding have concurred in any direction, consent or waiver under this Indenture, Bonds which are owned by the Issuer, the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company (unless the Issuer, the Company and such persons own all Bonds which are then

Outstanding, determined without regard to this Section) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Bonds which the Trustee knows are so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer, the Company or any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

SECTION 14.06. Counterparts. This Indenture may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Indenture.

SECTION 14.07. Governing Law. The laws of the Commonwealth shall govern the construction and enforcement of this Indenture and of all Bonds.

SECTION 14.08. Notices. Except as otherwise provided in this Indenture, all notices, approvals, consents, certificates, requests, filings, designations or other communication by the Issuer, the Company, the Trustee, the Paying Agent, the Credit Bank, the Registrar, the Tender Agent, the Authenticating Agent and the Remarketing Agent pursuant to this Indenture shall be in writing and shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(a) If to the Issuer:	Kenton County Airport Board Attention: Secretary-Treasurer Cincinnati/Northern Kentucky International Airport P. 0. Box 752000 Cincinnati, Ohio 45275 Telephone: 606-283-3177 Telecopier: 606-283-3269
(b) If to the Company:	Delta Air Lines, Inc. Attention: Vice President-Treasurer William B. Hartsfield Atlanta International Airport Atlanta, Georgia 30320 Telephone:(404) 715-6225 Telecopier: (404) 715-4220
(c) If to the Trustee:	Star Bank, N.A. 425 Walnut Street Cincinnati, Ohio 45202 Telephone: (513) 632-4389 Telecopier: (513) 632-5511
(d) If to the Credit Bank:	(Not applicable as of date of delivery of this Indenture)
(e) If to the Remarketing Agent:	(Not applicable as of date of delivery of this Indenture)
(f) If to the Authenticating Agent, Paying Agent, Registrar or Tender Agent:	(Not applicable as of date of delivery of this Indenture)

A duplicate copy of each notice, approval, consent, certificate, request, filing, designation or other communication given hereunder by the Issuer, the Company, the Trustee, the Remarketing Agent, the Registrar, the Tender Agent, Paying Agent or the

Authenticating Agent to any one of the others shall also be given to all of the others and to the Credit Bank. A duplicate copy of each notice, approval, consent, certificate, request, filing, designation or other communication given hereunder to the Owners of Bonds shall also be given to the Credit Bank.

Any of the foregoing (or, if applicable, a successor to any of the foregoing) may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

The Trustee shall provide Moody's, if the Bonds of a Series are then rated by Moody's, or S&P, if the Bonds of a Series are then rated by S&P, as appropriate, with prior written notice of (i) the appointment of any successor Trustee, Registrar, Paying Agent, Tender Agent or Remarketing Agent, (ii) any amendments to this Indenture, the Tender Agreement or the Agreement, (iii) the payment (or provision for payment) in whole of such Bonds or any redemption of such Bonds, (iv) the adjustment of the Interest Rate Period applicable to such Bonds, and (v) any replacement, reduction, termination, extension or other modification to the Credit Facility for such Bonds.

SECTION 14.09. Holidays. If the last day of any period of grace, or the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, the last day of such period of grace shall be deemed to be, and such payment may be made or act performed or right exercised, with the same force and effect as if done on the nominal date provided in this Indenture, on, the next succeeding

Business Day, and no interest shall accrue for the period after such nominal date.

SECTION 14.10. References to Credit Bank and Credit Facility When Credit Facility Not in Effect. If at any time, there shall be no Credit Facility in effect with respect to the Bonds of a Series, then all references contained in this Indenture to the Credit Bank or the Credit Facility shall be inapplicable and be of no force and effect.

(End of Article XIV)

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed by its duly authorized Chairman and sealed and attested by its duly authorized Secretary, and Star Bank, N.A., Cincinnati, Ohio, as Trustee, has caused this Indenture to be executed and sealed in its behalf by its duly authorized officer all as of the date and year first above written.

KENTON COUNTY AIRPORT BOARD

By: /s/ FRANK (Al) SCHLEPER
FRANK (Al) SCHLEPER
Chairman

(SEAL)

Attest:

/s/ JOHN L. BROCKETT
JOHN L. BROCKETT
Secretary-Treasurer

STAR BANK, N.A. as Trustee

(SEAL)

By: /s/ Nancy V. Kelly
Title: Senior Trust Officer

Attest:

By: /s/ Cheri Scott Geraci
Title: ASSISTANT TRUST OFFICER

EXHIBIT A

[FORM OF 1992 SERIES A BONDS]

COMMONWEALTH OF KENTUCKY KENTON COUNTY AIRPORT BOARD SPECIAL FACILITIES REVENUE BOND 1992 SERIES A (DELTA AIR LINES, INC. PROJECT)

Type of Interest Rate Period:	Interest Rate for Long-Term Interest Rate Period Only:	Mandatory Tender Date for Long-Term Interest Rate Period:

For Short-Term Interest Rate Period Only

Interest Rate(%):	First Day of Bond Interest Term and Interest Accrual Date:	First Day of Next Bond Interest Term and Interest Payment Date:

Interest Due on Next Interest Payment Date:	No. of Days in Bond Interest Term:

Maturity Date:

Registered Owner:

Principal Sum: Dollars

FOR VALUE RECEIVED, the Kenton County Airport Board, a public body corporate and politic duly organized and validly existing under the Constitution and laws of the Commonwealth of Kentucky (the "Issuer"), hereby promises to pay (but solely and only from the sources hereinafter described) to the Registered Owner named above, or registered assigns as hereinafter provided, on the Maturity Date identified above, upon the presentation and surrender hereof, the Principal Sum specified above, and to pay (but solely and only from the sources hereinafter described) interest on said Principal Sum from time to time remaining unpaid until payment of said Principal Sum has been made or duly provided for, at the rates and on the dates determined as described herein and in the Indenture (hereinafter defined). The principal of and any redemption premium on this Bond are payable at the principal corporate trust office of Star Bank, N.A., Cincinnati, Ohio (the "Trustee" and 'Paying Agent"). Interest on this Bond is payable by (i) check mailed (or as otherwise provided in the Indenture) on the date on which due to the Registered Owner hereof at the address of such Registered Owner shown on the registration books kept by Citibank, N.A., New York, New York (the 'Registrar"), as of the close of business on the Record Date (as defined in the Indenture) in respect of such interest, or (ii) in the case of Bonds bearing interest at Bond Interest Term Rates, or Bonds (bearing interest other than at a Bond Interest Term Rate) owned by an Owner who is the Registered Owner of Bonds in an aggregate principal amount in excess of $1,000,000 and who, prior to the Record Date next preceding any Interest Payment Date, shall have provided the Paying Agent with wire transfer instructions, by wire transfer; provided that if and

while the Bonds bear interest at Bond Interest Term Rates, interest payable hereon is payable only upon presentation hereof to the designated Tender Agent (the "Tender Agent"), at its designated principal office for the delivery of Bonds. Payment of the principal of and interest and any premium on this Bond shall be in such coin or currency of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts.

The 1992 Series A Bonds are issued pursuant to and in full compliance with the Constitution and laws of the Commonwealth of Kentucky, including particularly Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes ("the Act"), and pursuant to a Resolution of the Issuer adopted on February__, 1992. All terms defined in the Indenture and not otherwise defined herein shall have the meaning given thereto in the Indenture.

REFERENCE IS MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF. SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and laws of the Commonwealth of Kentucky to exist, to have happened and to have been performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in regular and due form as required by law, and the issuance of this Bond and

the series of which it forms a part does not exceed or violate any constitutional or statutory limitation.

THE BONDS AND THE INTEREST THEREON ARE SPECIAL AND LIMITED OBLIGATIONS OF THE ISSUER, AND SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER OR THE COMMONWEALTH OF KENTUCKY OR ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE COMMONWEALTH OF KENTUCKY NOR ANY POLITICAL SUBDIVISION THEREOF NOR THE ISSUER SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE BONDS, THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEYS PLEDGED THEREFOR AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER NOR THE COMMONWEALTH OF KENTUCKY OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE BONDS OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO.

Neither the Chairman, Secretary-Treasurer, Board members, officers or employees of the Issuer nor any person executing this Bond shall be personally liable hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond shall not be entitled to any right or benefit under the Indenture, or be valid or become obligatory for any purpose, until this Bond shall have been authenticated by manual execution by the Registrar of the Certificate of Authentication inscribed hereon.

IN WITNESS WHEREOF, the Kenton County Airport Board has caused this Bond to be executed with the reproduced facsimile signature of its Chairman and the Issuer's seal to be reproduced hereon and attested by the reproduced facsimile signature of the Secretary-Treasurer of the Issuer.

KENTON COUNTY AIRPORT BOARD

[Seal] By: (facsimile signature)
Chairman

ATTEST:

By: (facsimile signature)
Secretary-Treasurer

[Form of Certificate of Authentication to appear on Face of Bond]

CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is one of the Bonds described in the within-mentioned Indenture.

Date of Authentication

STAR BANK, N.A.
Cincinnati, Ohio
Trustee and Registrar

By:_____
Authorized Signature

[Form of Reverse of Bond]

This Bond is one of a series of Bonds issued in the aggregate principal amount of $_____ (the "1992 Series A Bonds") for the purpose of (i) paying a portion of the estimated cost of the acquisition and construction of certain airport facilities (the "Project Facilities") at the Cincinnati/Northern Ken-

tucky International Airport (the "Airport"), (ii) paying interest on the 1992 Series A Bonds during construction, and (iii) paying certain costs of issuance of the 1992 Series A Bonds. The 1992 Series A Bonds are issued under and pursuant to a Trust Indenture, dated as of February 1, 1992 (the "Indenture"), between the Issuer and Star Bank, N.A., Cincinnati, Ohio, as Trustee. Simultaneously with the issuance of the 1992 Series A Bonds, the Issuer and Delta Air Lines, Inc. (the "Company") have entered into a Lease Agreement, dated as of February 1, 1992 (the "Agreement"), under which the Issuer has agreed to issue the 1992 Series A Bonds and the Company has agreed to make certain rental payments to the Issuer sufficient to pay the principal of, redemption premium (if any) and interest on the 1992 Series A Bonds (and on all other Bonds, as hereinafter defined, issued under the Indenture) as the same become due and payable and to pay the purchase price, if any, of the 1992 Series A Bonds (and on all other Bonds issued under the Indenture) required to be purchased under the terms of the Indenture.

The 1992 Series A Bonds (and all other Bonds issued under the Indenture, including the Kenton County Airport Board Special Facilities Revenue Bonds, 1992 Series B (Delta Air Lines, Inc. Project) (the "1992 Series B Bonds") issued concurrently with the 1992 Series A Bonds) are equally and ratably secured by a pledge under the Indenture of the Trust Estate, which includes the Receipts and Revenues and any moneys realized by the Trustee under a Credit Facility, if any, as hereinafter described and all other moneys received by, or on behalf of, the Trustee, including, without limitation, moneys in the Bond Fund created under and held by the Trustee pursuant to the Indenture and all income and profit

from the investment of such moneys, but does not include any moneys or investments held in any Rebate Fund created under the Indenture or in any Bond Purchase Fund created pursuant to the Indenture. The Issuer has assigned to the Trustee as security for the Bonds, its rights, title and interest in and to the Agreement (other than certain rights to indemnification and to payment of certain administrative expenses and certain other rights). The Indenture contains terms and conditions upon which additional bonds may be issued thereunder (such additional bonds, together with the 1992 Series A Bonds and the 1992 Series B Bonds, are hereinafter collectively referred to as the "Bonds"). Such additional Bonds may be issued by the Issuer to finance Project Facilities located at the Cincinnati/Northern Kentucky International Airport or to refund all or any part of the Bonds of any series or of bonds previously issued by the Issuer for the benefit of the Company.

This Bond shall not, as of the Date of Issuance hereof, be secured by a Credit Facility. From and after such Date of Issuance, the 1992 Series A Bonds may be secured from time to time by moneys drawn by the Trustee under any Credit Facility which may be in effect from time to time with respect to the 1992 Series A Bonds.

The term of the 1992 Series A Bonds will be divided into consecutive Interest Rate Periods during each of which the 1992 Series A Bonds shall bear interest at a Weekly Interest Rate (a "Weekly Interest Rate Period"), a Long-Term Interest Rate (a "Long-Term Interest Rate Period"), or a Bond Interest Term Rate for one or more consecutive Bond Interest Terms (a 'Short-Term Interest Rate Period"). The initial

Interest Rate Period shall be a Long-Term Interest Rate Period from February 27, 1992 until the Maturity Dates of the 1992 Series A Bonds (subject to adjustment as hereinafter described) and during such period the 1992 Series A Bonds shall bear interest at the rate set forth on the first page hereof. Subject to certain conditions set forth in the Indenture, the interest rate on the 1992 Series A Bonds may be adjusted from the initial Long-Term Interest Rate Period to a Weekly Interest Rate or Bond Interest Term Rates at any time when the 1992 Series A Bonds may be redeemed at the option of the Company in accordance with the redemption provisions described herein, and thereafter again adjusted as described in the Indenture. As hereinafter described, the 1992 Series A Bonds are subject to mandatory purchase on the first day of any Interest Rate Period, as hereinafter described.

This Bond shall bear interest from and including the Interest Accrual Date (hereinafter defined) immediately preceding the date of authentication hereof, or, if such date of authentication is an Interest Accrual Date to which interest on this Bond has been paid or duly provided for, or the date of initial authentication hereof, then from the date of authentication hereof; provided, however, if interest on the Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for registration of transfer or exchange shall bear interest from the date to which interest has been paid in full on the Bonds or if no interest has been paid on the Bonds, from February 1, 1992.

During any Weekly Interest Rate Period, interest on the Bonds shall be payable on each Interest Payment Date for the period commencing on the immediately

preceding Interest Accrual Date (or, if any Interest Payment Date is not a Wednesday, commencing on the second preceding Interest Accrual Date) and ending on the Tuesday immediately preceding the Interest Payment Date (or, if sooner, the last day of the Weekly Interest Rate Period). During any Short-Term Interest Rate Period or Long-Term Interest Rate Period, interest on this Bond shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Accrual Date and ending on the day immediately preceding such Interest Payment Date. In any event, interest on this Bond shall be payable for the final Interest Rate Period to the date on which this Bond shall, have been paid in full. Interest shall be computed, in the case of a Long-Term Interest Rate Period, on the basis of a 360-day year consisting of twelve 30-day months, and in the case of any other Interest Rate Period, on the basis of a 365 or 366-day year, as appropriate, and the actual number of days elapsed. The Bonds may be issued in the form of fully registered Bonds in the denominations of (i) $5,000 and any integral multiple thereof during any Long-Term Interest Rate Period, and (ii) $100,000 and any integral multiple of $5,000 in excess of $100,000 during any Weekly Interest Rate Period or Short-Term Interest Rate Period (the "Authorized Denominations").

The term "Interest Accrual Date" means (i) with respect to any Weekly Interest Rate Period, the first day thereof and, thereafter, the first Wednesday of each calendar month during that Weekly Interest Rate Period, (ii) with respect to any Long- Term Interest Rate Period, the first day thereof and, thereafter, each Interest Payment Date in respect thereof, other than the last such Interest Payment Date,

and (iii) with respect to each Bond Interest Term within a Short-Term Interest Rate Period, the first day thereof. The term "Interest Payment Date" means (1) with respect to any Weekly Interest Rate Period, the first Wednesday of each calendar month, or, if such first Wednesday shall not be a Business Day, the next succeeding Business Day, (2) with respect to any Long-Term Interest Rate Period, the first day of a month and the first day of each sixth month thereafter, as determined by the Company, or if any of such days shall not be a Business Day, the next succeeding Business Day, the first Interest Payment Date during a Long-Term Interest Rate Period being the first day of such month which is at least 90 days from the first day of such Long-Term Interest Rate Period, (3) with respect to any Bond Interest Term, the day next succeeding the last day thereof, and (4) with respect to each Interest Rate Period, the day next succeeding the last day thereof. The term "Business Day" means any day other than a Saturday, a Sunday or any other day on which banks located in the cities in which the principal offices of the Trustee, the Tender Agent, the Paying Agent, the Registrar, the Remarketing Agent, the Company, the Authenticating Agent and the issuer of any Credit Facility are located are authorized or required to remain closed.

The interest rate on the 1992 Series A Bonds shall be determined as follows:

(1) Weekly Interest Rate. During each Weekly Interest Rate Period, this Bond shall bear interest at the Weekly Interest Rate, which shall be determined by the Remarketing Agent on Tuesday of each week during such Weekly Interest Rate Period, or if such day shall not be a Business Day, then on the next

succeeding Business Day. The first Weekly Interest Rate determined for each Weekly Interest Rate Period shall be determined on or prior to the first day of such Weekly Interest Rate Period and shall apply to the period commencing on the first day of such Weekly Interest Rate Period and ending on the next succeeding Tuesday. Thereafter, each Weekly Interest Rate shall apply to the period commencing on Wednesday and ending on the next succeeding Tuesday, unless such Weekly Interest Rate Period shall end on a day other than Tuesday, in which event the last Weekly Interest Rate for such Weekly Interest Rate Period shall apply to the period commencing on Wednesday preceding the last day of such Weekly Interest Rate Period and ending on the last day of such Weekly Interest Rate Period. The Weekly Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent (based on the examination of tax-exempt obligations comparable in the judgment of the Remarketing Agent to the 1992 Series A Bonds and known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions) to be the minimum interest rate which, if borne by the 1992 Series A Bonds, would enable the Remarketing Agent to sell the 1992 Series A Bonds on such date of determination at a price (without regarding accrued interest) equal to the principal amount thereof. In the event that the Remarketing Agent fails to establish a Weekly Interest Rate for any week, then the Weekly Interest Rate for such week shall be the same as the Weekly Interest Rate for the immediately preceding week that was determined by the Remarketing Agent. In the event that the Weekly Interest Rate for the immediately preceding week was not determined by the Remarketing Agent, or in the event that the Weekly

Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the interest rate for such week shall be calculated by the Trustee and shall be equal to 75% of the rate on 30-day High-Grade unsecured commercial paper notes sold through dealers by major corporations as reported in the Wall Street Journal on the day the Weekly Interest Rate would otherwise be determined as provided in the Indenture for such Weekly Interest Rate Period.

(2) Long-Term Interest Rate. During each Long-Term Interest Rate Period, the 1992 Series A Bonds shall bear interest at the Long-Term Interest Rate. The Long-Term Interest Rate for the 1992 Series A Bonds shall be determined by the Remarketing Agent on a Business Day no later than the effective date of such Long-Term Interest Rate Period with respect to the 1992 Series A Bonds. The Long-Term Interest Rate (except for the initial Long-Term Interest Rate determined for this Bond) shall be the rate of interest per annum determined by the Remarketing Agent (based on the examination of tax-exempt obligations comparable in the judgment of the Remarketing Agent to the 1992 Series A Bonds and known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions) to be the minimum interest rate at which the Remarketing Agent will agree to purchase the 1992 Series A Bonds on such effective date for resale at a price (without regarding accrued interest) equal to the principal amount thereof.

(3) Bond Interest Terms and Bond Interest Term Rates. During each Short-Term Interest Rate Period, this 1992 Series A Bond shall bear interest during each Bond Interest Term for this 1992 Series A Bond

at the Bond Interest Term Rate for this 1992 Series A Bond. The Bond Interest Term and Bond Interest Term Rate for this 1992 Series A Bond shall be determined by the Remarketing Agent no later than the first day of each Bond Interest Term. The Bond Interest Term and the Bond Interest Term Rate need not be the same for any two 1992 Series A Bonds, even if determined on the same date. The Bond Interest Term for this 1992 Series A Bond shall be a period of not more than 270 days, determined by the Remarketing Agent to be the period which, together with all other Bond Interest Terms for all 1992 Series A Bonds then outstanding under the Indenture, will result in the lowest overall interest expense on such 1992 Series A Bonds over the next succeeding 270 days, taking into account certain factors set forth in the Indenture. Any 1992 Series A Bond purchased on behalf of the Company and remaining unsold by the Remarketing Agent as of the close of business on the first day of the Bond Interest Term for that 1992 Series A Bond shall have a Bond Interest Term of one day or, if that Bond Interest Term does not end on a day immediately preceding a Business Day, a Bond Interest Term ending on the day immediately preceding the next Business Day. If for any reason a Bond Interest Term for any 1992 Series A Bond cannot be so determined by the Remarketing Agent, or if the determination of such Bond Interest Term is held by a court of law to be invalid or unenforceable, then such Bond Interest Term shall be thirty days, but if the last day so determined shall not be a day immediately preceding a Business Day, shall end on the first day immediately preceding the Business Day next succeeding such last day, or if such last day would be after the day immediately preceding the

Maturity Date, shall end on the day immediately preceding the Maturity Date.

The Registrar shall give notice by first class mail of any adjustment in the Interest Rate Period not less than twelve days prior to the effective date of such Interest Rate Period, or, in the case of an adjustment from a Long-Term Interest Rate Period, not less than thirty days prior to the effective date of such Long Term Interest Rate Period. In the event of an adjustment in the Interest Rate Period applicable to the 1992 Series A Bonds, the 1992 Series A Bonds shall be subject to mandatory tender for purchase as hereinafter described.

The Company shall have the right to deliver to the Trustee, Registrar, Remarketing Agent, Tender Agent, Paying Agent, Authenticating Agent and Credit Bank on or prior to 10:00 a.m., New York City time, on the effective date of any such adjustment of an Interest Rate Period a notice to the effect that the Company elects to rescind its election to make such adjustment. In connection with any adjustment of the Interest Rate Period on the Bonds, the Company (if such election is not rescinded as provided in the prior sentence) is obligated to cause to be provided to the Issuer, the Trustee, the Company and the Remarketing Agent a Favorable Opinion of Bond Counsel on the effective date of such adjustment. In addition, certain other conditions precedent exist to the conversion to a Long-Term Interest Rate Period as described in the Indenture. In the event that Bond Counsel fails to deliver a Favorable Opinion of Bond Counsel on the effective date of any adjustment in the Interest Rate Period, the Company rescinds its election to make such adjustment or the other conditions to adjustment of any Interest Rate Period as

provided in the Indenture are not met, then the 1992 Series A Bonds shall continue to bear interest at a Weekly Interest Rate or Bond Interest Term Rates, as the case may be, as in effect immediately prior to such proposed adjustment in the Interest Rate Period, or, in the event that the 1992 Series A Bonds are being adjusted from a Long-Term Interest Rate Period, then the 1992 Series A Bonds shall be adjusted to bear interest at a Weekly Interest Rate on the date which would have been the effective date of such change in the Interest Rate; provided, however, that if notice of such adjustment has been mailed to the Owners of the 1992 Series A Bonds then the 1992 Series A Bonds shall continue to be subject to mandatory tender for purchase on the date that would have been the effective date of such adjustment as provided below.

Purchase of 1992 Series A Bonds During Weekly Interest Rate Period. During any Weekly Interest Rate Period, this 1992 Series A Bond shall be purchased (in whole) at the option of the Owner on any Business Day at a purchase price equal to the principal amount hereof plus accrued interest, if any, from and including the Interest Accrual Date immediately preceding the date of purchase through and including the day immediately preceding the date of purchase, unless the date of purchase shall be an Interest Accrual Date, in which case at a purchase price equal to the principal amount hereof, payable by wire transfer in immediately available funds, upon delivery to the Tender Agent at its Principal Office for delivery of notices of an irrevocable written notice which states the principal amount of this Bond and the date on which the same shall be purchased, which date shall be a Business Day not prior to the seventh day next succeeding the date of the delivery

of such notice to the Tender Agent. Any notice delivered to the Tender Agent after 4:00 p.m., New York City time, shall be deemed to have been received on the next succeeding Business Day. For payment of such purchase price on the date specified in such notice, this 1992 Series A Bond must be delivered, at or prior to 10:00 a.m., New York City time, on the date specified in such notice, to the Tender Agent at its Principal Office for delivery of Bonds, accompanied by an instrument of transfer hereof, in form satisfactory to the Tender Agent, executed in blank by the Owner hereof or his duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange, Inc. In the event this Bond is in Book-Entry Only System format, Depository Trust Company shall deliver to the Tender Agent such documentation and information as required by the Tender Agent.

Mandatory Tender for Purchase on day next Succeeding the Last Day of Each Bond Interest Term. On the day next succeeding the last day of each Bond Interest Term for this 1992 Series A Bond, unless such day is the first day of a new Interest Rate Period, this 1992 Series A Bond shall be purchased from its Owner at a purchase price equal to the principal amount hereof, payable in immediately available funds, if this 1992 Series A Bond is delivered to the Tender Agent on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., on the next succeeding Business Day. The purchase price of this 1992 Series A Bond so purchased shall be payable only upon surrender of this 1992 Series A Bond to the Tender Agent at its Principal Office for delivery of 1992 Series A Bonds, accompanied by an instrument of transfer hereof, in form

satisfactory to the Tender Agent, executed in blank by the Owner hereof or his duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange, Inc.

Mandatory Tender for Purchase on First Day of Each Interest Rate Period. This 1992 Series A Bond shall be subject to mandatory tender for purchase on the first day of each Interest Rate Period for the 1992 Series A Bonds, or on the day which would have been the first day of an Interest Rate Period in the event that one of the conditions precedent to the adjustment to a new Interest Rate Period shall not be met or the Company shall have rescinded its election to make such adjustment, as described in the Indenture, at a purchase price, payable in immediately available funds, equal to the principal amount hereof or, in the case of a purchase on the first day of an Interest Rate Period which shall be preceded by a Long-Term Interest Rate Period and which shall commence prior to the day originally established as the last day of such preceding Long-Term Interest Rate Period, at a purchase price equal to the optional redemption price set forth herein which would have been applicable to such Bonds on such date if such preceding Long-Term Interest Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

Mandatory Tender for Purchase Upon Termination, Expiration, Reduction, Modification or Replacement of Credit Facility. As a result of (1) the termination or expiration of any Credit Facility then in effect for the 1992 Series A Bonds, (2) the occurrence of an event of default under the Reimbursement Agreement relating to such Credit Facility (the "Reimbursement

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Agreement") or (3) such Credit Facility being reduced, replaced or modified with the effect that this 1992 Series A Bond is no longer payable from such Credit Facility (in each case, whether or not any Alternate Letter of Credit or Alternate Credit Facility has been obtained) or the amount of coverage with respect thereto being reduced or not being reinstated following a draw on the Credit Facility with respect to interest on this Bond, then (but only in the circumstances where the Letter of Credit has not been renewed or replaced by an Alternate Letter of Credit issued and delivered at least forty-five days prior to the termination, expiration, reduction or modification on the fifth day preceding any termination, expiration, reduction or modification of the Credit Facility, or, in the case of the failure of the Credit Bank to reinstate the amount payable on the Credit Facility as to interest within the time permitted thereby, a Business Day not less than ten days but not more than fifteen days after the Credit Bank shall have failed to reinstate the amount payable on the Credit Facility with respect to interest, this Bond shall be purchased or deemed purchased. The purchase price for this Bond if so purchased shall be equal to the principal amount of this Bond plus accrued interest plus redemption premium (if any).

The purchase price of this Bond if so purchased shall be payable only upon delivery of this Bond to the Tender Agent at its principal office for the delivery of Bonds, accompanied by an instrument of transfer hereof, in form satisfactory to the Tender Agent, executed in blank by the Owner hereof or his duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange, Inc., at or prior to 10:00 a.m., New York City time, on the date specified

for such delivery in the notice of such expiration or termination of the Credit Facility delivered pursuant to the Indenture, or, if no such date shall have been so specified, on the fifth Business Day preceding such expiration, termination, reduction or modification of the Credit Facility. In the event that, as a result of any such expiration, termination, replacement, reduction or modification of the Credit Facility, the Tender Agent (upon receipt from the Owner thereof in exchange for payment of the purchase price thereof) shall present this Bond to the Registrar for notation thereon of any distinguishing mark required to be included thereon at the request of any rating agency then rating such Bonds or at the request of the Company. In the event that in connection with any reduction of the amounts payable under the Credit Facility, the Company shall deliver to the Trustee, the Tender Agent, the Remarketing Agent and the Registrar, prior to the date that notice of such reduction is given by the Registrar, written evidence from Moody's, if the 1992 Series A Bonds are then rated by Moody's, or S&P, if the 1992 Series A Bonds are then rated by S&P, to the effect that such reduction, in and of itself, will not result in the withdrawal or reduction of the rating(s) then applicable to the 1992 Series A Bonds and a Favorable Opinion of Bond Counsel, then the 1992 Series A Bonds shall not be subject to mandatory tender for purchase as a result of such reduction.

The giving of notice by an Owner of this 1992 Series A Bond that such Owner elects to have this 1992 Series A Bond purchased during a Weekly Interest Rate Period as described above shall constitute the irrevocable tender for purchase of this 1992 Series A Bond with respect to which such notice shall have been given regardless of whether this 1992 Series A

Bond shall be delivered to the Tender Agent for purchase on the relevant purchase date as provided in the Indenture.

The Tender Agent may refuse to accept delivery of any 1992 Series A Bond for which a proper instrument of transfer has not been provided; such refusal, however, shall not affect the validity of the purchase of this 1992 Series A Bond as herein described. If any Owner of a 1992 Series A Bond who shall have given notice of tender of purchase pursuant hereto or any Owner of a 1992 Series A Bond subject to mandatory tender for purchase pursuant hereof shall fail to deliver such 1992 Series A Bond properly endorsed to the Tender Agent for such 1992 Series A Bond at the place and on the applicable date and at the time specified, such 1992 Series A Bond shall constitute an Undelivered Bond. If funds in the amount of the purchase price of any Undelivered Bond are available for payment to the Owner thereof on the date and at the time specified, then from and after the date and time of that required delivery, (1) such Undelivered Bond shall no longer be deemed to be outstanding under the Indenture; (2) interest shall no longer accrue thereon; and (3) funds in the amount of the purchase price of the Undelivered Bond shall be held by the Tender Agent for the benefit of the Owner thereof, to be paid upon delivery (and proper endorsement) of the Undelivered Bond to the Tender Agent at its Principal Office for delivery of 1992 Series A Bonds. Any funds held by the Tender Agent for the purchase of Undelivered Bonds shall be held uninvested.

No Remarketing Agent shall be appointed for the 1992 Series A Bonds on the Date of Issuance of such Bonds. The Company may, with the consent of the Issuer, appoint a Remarketing Agent for the 1992

Series A Bonds after such Date of Issuance; provided, however, that a Remarketing Agent shall be appointed by the Company prior to the time a Remarketing Agent shall be required to perform the duties and obligations imposed upon it under the Indenture. Any Remarketing Agent so appointed shall designate its Principal Office and signify its acceptance of the duties and obligations imposed upon it under the Indenture by written instrument.

Redemption Provisions. The 1992 Series A Bonds shall be subject to redemption prior to maturity as follows:

(a) (i) On any Interest Payment Date during a Weekly Interest Rate Period, the 1992 Series A Bonds shall be subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at a redemption price of par; and

(ii) On the day succeeding the last day of any Bond Interest Term with respect to any 1992 Series A Bond, such 1992 Series A Bond shall be subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at a redemption price of par.

(b) (i) During the Long-Term Interest Rate Period commencing on the Date of Issuance of the 1992 Series A Bonds, the 1992 Series A Bonds shall be subject to optional redemption as follows:

(A) The 1992 Series (A) Bonds maturing on February 1, _____, are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1,_____, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices

(expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount)
February 1, __to January 31,___	
February 1, __to January 31,___	
February 1, __and thereafter	

(B) The 1992 Series A Bonds maturing on February 1,_____, are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1_____, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices (expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount)
February 1, __ to January 31, __	
February 1, _ to January 31, __	
February 1, _ and thereafter	

(C) The 1992 Series A Bonds maturing on February 1, _____ are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1, _____ upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices

(expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount)
February 1, __ to January 31, __	
February 1, __ to January 31, __	
February 1, __ and thereafter	

(D) The 1992 Series A Bonds maturing on February 1,_____, are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1,_____, upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices (expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption.

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount)
February 1, __ to January 31, __	
February 1, __ to January 31, __	
February 1, __ and thereafter	

(c) During any Long-Term Interest Rate Period the 1992 Series A Bonds (except during the Long-Term Interest Rate Period for the 1992 Series A Bonds Commencing on the Date of Issuance of the 1992 Series A Bonds) shall be subject to optional redemption by the Issuer, at the direction of the Company, on the first day thereof, in whole or in part, at the

redemption price of par, and thereafter, during the periods specified below or, if a Favorable Opinion of Bond Counsel is delivered as provided in the Indenture, during the periods specified in the notice of the Company to the Registrar pursuant to the Indenture, in whole at any time or in part from time to time, at the redemption prices (expressed as a percentage of principal amount) hereinafter indicated or specified in the notice of the Company to the Registrar pursuant to the Indenture, plus accrued interest, if any, to the redemption date.

Length of Long-Term Interest Rate Period (expressed in years)	Redemption Prices
greater than 15	after 10 years at 102%, declining by 1% *every* year to 100%
less than or equal to 15 and greater than 10	after 7 years at 102%, declining by 1% every year to 100%
less than or equal to 10 and greater than 7	after 5 years at 102%, declining by 1% every year to 100%
less than or equal to 7 and greater than 4	after 3 years at 101%, declining by 1% every year to 100%
less than or equal to 4	after 2 years at 100%

(d) The 1992 Series A Bonds shall be subject to extraordinary optional redemption by the Issuer, at the direction of the Company, in whole or in part at any time at a redemption price of par, plus accrued interest, if any, to the redemption date, if the Company shall deliver to the Trustee a certificate of an Authorized Company Representative certifying that:

(i) The Company shall have determined, in its sole discretion, that the continued operation of one or more of the Project Facilities or a substantial portion of one or more of the Project Facilities is impracticable, uneconomical or undesirable for any reason, including, without limitation, the imposition upon the Company with respect thereto of unreasonable burdens or excessive liabilities, which shall be deemed to include, without limitation, the imposition or substantial increase of ad valorem property taxes or taxes on the leasing or use of the Project Facilities or a substantial portion thereof or on amounts payable with respect thereto; or

(ii) All or a substantial portion of one or more of the Project Facilities shall have been damaged, destroyed, condemned or taken by eminent domain or sold under a reasonably apprehended threat of condemnation or such portion of one or more of the Project Facilities or the use or control thereof shall have been condemned or taken by eminent domain or sold under a reasonably apprehended threat of condemnation as to render the Project Facilities or a substantial portion of one or more of the Project Facilities unsatisfactory for their intended uses, as determined by the Company in its sole discretion; or

(iii) the construction or operation of one or more of the Project Facilities or a substantial portion or one or more of the Project Facilities shall have been enjoined or prevented or shall have otherwise been prohibited by, or shall conflict with, any order, decree, rule or regulation of any court or of any federal, state or local regulatory body, administrative agency or other governmental body.

To exercise any such option with respect to all or a portion of the 1992 Series A Bonds, the Company

shall give written notice to the Trustee, which notice shall specify the Project Facilities affected by the above specified events and the principal amount of Bonds of such Series to be redeemed, including the maturity or maturities of the 1992 Series A Bonds to be redeemed. Such notice shall also specify a redemption date, which date may not be earlier than 30 days after such notice is given, and shall further specify that, as determined by the Company, one or more of such events has occurred or one or more of such conditions is continuing, which determination shall be conclusive.

(e) The 1992 Series A Bonds shall be subject to mandatory redemption by the Issuer, in whole, or in such part as will, in the opinion of Bond Counsel, preserve the exclusion from gross income for federal income tax purposes of the interest on the 1992 Series A Bonds remaining Outstanding, or either of such Series, at a redemption price of par, plus accrued interest, if any, to the redemption date, on the 180th day (or such earlier date as may be designated by the Company) after a Determination of Taxability (provided however, that if the lien of the Indenture has been defeased prior to a Determination of Taxability, the 1992 Series A Bonds will not be subject to redemption, except for any redemption provided for in connection with such defeasance.

(f) The 1992 Series A Bonds, or an appropriate allocable portion thereof, shall be redeemed by the Issuer at a redemption price equal to 100% of the principal amount thereof, without redemption premium, plus accrued interest, if any, to the redemption date, within 60 days (i) following the automatic termination of the Agreement as to the Project Facilities located on a site covered by any ground lease as a

result of the termination of such ground lease in accordance with its terms, or (ii) following the failure by the Company, at any time during which any 1992 Series A Bonds are outstanding, to exercise any option to renew the term of the Agreement as to the Project Facilities, or portion thereof, then existing and leased under the Agreement on the applicable term expiration date subsequent to the expiration of the initial term thereof, which initial term expires on December 31, 2015.

(g) Any Series of Additional Bonds shall be subject to any mandatory sinking fund redemptions provided in the Supplemental Indenture providing for the issuance of such Series of Additional Bonds.

(h) Any Series of Additional Bonds shall be subject to any optional redemptions provided in the Supplemental Indenture providing for the issuance of such Series, of Additional Bonds.

If less than all of the Bonds at the time outstanding are to be called for redemption, the particular Bonds or units thereof in Authorized Denominations shall be selected by the Registrar, by lot in such manner as the Registrar in. its discretion may deem proper. Any Bonds and portions of Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with the Indenture shall cease to bear interest on the specified redemption date and shall thereafter cease to be entitled to any lien, benefit or security under the Indenture.

The transfer of this 1992 Series A Bond shall be registered upon the registration books kept at the principal corporate trust office of the Registrar, upon surrender of this 1992 Series A Bond at said office, together with the attached instrument of transfer duly executed by the Owner or his duly authorized attorney.

The Owner of this 1992 Series A Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

With certain exceptions as provided therein, the Indenture and the Agreement may be modified or amended only with the consent of the Owners of not less than a majority in aggregate principal amount of all Bonds outstanding under the Indenture.

Reference is hereby made to the Indenture and the Agreement, copies of which are on file with the Trustee, for the provisions, among others, with respect to the nature and extent of the rights, duties and obligations of the Issuer, the Company, the Trustee, the Paying Agent, the Registrar, the Tender Agent, if any, the Authenticating Agent and the Remarketing Agent, if any, appointed pursuant to the Indenture and the Owners of the Bonds. The Owner of this 1992 Series A Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Indenture and the Agreement.

The Issuer, the Trustee, the Registrar, the Paying Agent, the Tender Agent, the Authenticating Agent and the Remarketing Agent may deem and treat the person in whose name this Bond is registered on the registration books of the Issuer maintained by the Registrar as the absolute owner hereof for all purposes, whether or not this Bond is overdue, and neither the Issuer, the Trustee, the Registrar, the Paying Agent, the Tender Agent, the Authenticating Agent nor the Remarketing Agent shall be affected by any notice to the contrary.

No covenant or agreement contained in this 1992 Series A Bond, the Indenture or the Agreement shall be deemed to be the covenant or agreement of any elected or appointed Chairman, Secretary-Treasurer, Board member, officer, agent, servant or employee of the Issuer in his individual capacity, and neither the members of the governing body of the Issuer, nor any official executing this 1992 Series A Bond, shall be liable personally on this 1992 Series A Bond or be subject to any personal liability or accountability by reason of the issuance of this 1992 Series A Bond.

[Form for Transfer]

COMPLETE AND SIGN THIS FORM FOR REGISTRATION OF TRANSFER

For value received _____ hereby sells, assigns and transfers unto _____ this 1992 Series A Bond and hereby irrevocably constitute and appoints _____ Attorney to register such transfer on the books of registration in the office of the Registrar with full power of substitution in the premises.

Dated: _____

Signature Guaranteed by:

NOTE: The signature on this Signature assignment must correspond with the name as written on the face of this Bond in every particular, without alteration, enlargement or any change whatsoever.

_____

Commercial Bank, Trust Company or Member Firm of New York Stock Exchange, Inc.

[FORM OF 1992 SERIES B BONDS]

COMMONWEALTH OF KENTUCKY KENTON COUNTY AIRPORT BOARD SPECIAL FACILITIES REVENUE BOND 1992 SERIES B (DELTA AIR LINES, INC. PROJECT]

Type of Interest Rate Period:	Interest Rate for Long-Term Interest Rate Period Only:	Mandatory Tender Date for Long-Term Interest Rate Period:

For Short-Term Interest Rate Period Only

Interest Rate(%)	First Day of Bond Interest Term and Interest Accrual Date:	First Day of Next Bond Interest Term and Interest Payment Date:

Interest Due On Next Interest Payment Date:	No. of Days in Bond Interest Term:

Maturity Date:
Registered Owner:
Principal Sum: Dollars

FOR VALUE RECEIVED, the Kenton County Airport Board, a public body corporate and politic duly organized and validly existing under the Constitution and laws of the Commonwealth of Kentucky (the "Issuer"), hereby promises to pay (but solely and only from the sources hereinafter described) to the Registered Owner named above, or registered assigns as hereinafter provided, on the Maturity Date identified above, upon the presentation and surrender hereof, the Principal Sum specified above, and to pay (but solely and only from the sources hereinafter

described) interest on said Principal Sum from time to time remaining unpaid until payment of said Principal Sum has been made or duly provided for, at the rates and on the dates determined as described herein and in the Indenture (hereinafter defined). The principal of and any redemption premium on this Bond are payable at the principal corporate trust office of Star Bank, N.A., Cincinnati, Ohio (the "Trustee' and "Paying Agent"). Interest on this Bond is payable by (i) check mailed (or as otherwise provided in the Indenture) on the date on which due to the Registered Owner hereof at the address of such Registered Owner shown on the registration books kept by Citibank, N.A., New York, New York (the "Registrar"), as of the close of business on the Record Date (as defined in the Indenture) in respect of such interest, or (ii) in the case of Bonds bearing interest at Bond Interest Term Rates, or Bonds (bearing interest other than at a Bond Interest Term Rate) owned by an Owner who is the Registered Owner of Bonds in an aggregate principal amount in excess of $1,000,000 and who, prior to the Record Date next preceding any Interest Payment Date, shall have provided the Paying Agent with wire transfer instructions, by wire transfer; provided that if and while the Bonds bear interest at Bond Interest Term Rates, interest payable hereon is payable only upon presentation hereof to the designated Tender Agent (the "Tender Agent"), at its designated principal office for the delivery of Bonds. Payment of the principal of and interest and any premium on this Bond shall be in such coin or currency of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts.

The 1992 Series B Bonds are issued pursuant to and in full compliance with the Constitution and laws of the Commonwealth of Kentucky, including particularly Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes ("the Act"), and pursuant to a Resolution of the Issuer adopted on February __, 1992. All terms defined in the Indenture and not otherwise defined herein shall have the meaning given thereto in the Indenture.

REFERENCE IS MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF. SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and laws of the Commonwealth of Kentucky to exist, to have happened and to have been performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in regular and due form as required by law, and the issuance of this Bond and the series of which it forms a part does not exceed or violate any constitutional or statutory limitation.

THE BONDS AND THE INTEREST THEREON ARE SPECIAL AND LIMITED OBLIGATIONS OF THE ISSUER, AND SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER OR THE COMMONWEALTH OF KENTUCKY OR ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE COMMONWEALTH OF KENTUCKY NOR ANY POLITI-

CAL SUBDIVISION THEREOF NOR THE ISSUER SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE BONDS, THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEYS PLEDGED THEREFOR AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER NOR THE COMMONWEALTH OF KENTUCKY OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE BONDS OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO.

Neither the Chairman, Secretary-Treasurer, Board members, officers or employees of the Issuer nor any person executing this Bond shall be personally liable hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond shall not be entitled to any right or benefit under the Indenture, or be valid or become obligatory for any purpose, until this Bond shall have been authenticated by manual execution by the Registrar of the Certificate of Authentication inscribed hereon.

IN WITNESS WHEREOF, the Kenton County Airport Board has caused this Bond to be executed with the reproduced facsimile signature of its Chairman and the Issuer's seal to be reproduced hereon and attested by the reproduced facsimile signature of the Secretary-Treasurer of the Issuer.

KENTON COUNTY AIRPORT BOARD

[Seal]
By (facsimile signature)
Chairman

ATTEST:

By (facsimile signature)
Secretary-Treasurer

[Form of Certificate of Authentication to appear on Face of. Bond]

CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is one of the Bonds described in the within-mentioned Indenture.

Date of Authentication: STAR BANK, N.A.
Cincinnati, Ohio
Trustee and Registrar

By:_____
Authorized Signature

[Form of Reverse of Bond]

This Bond is one of a series of Bonds issued in the aggregate principal amount of $_____ (the "1992 Series B Bonds") for the purpose of (i) paying a portion of the estimated cost of the acquisition and construction of certain airport facilities (the "Project Facilities") at the Cincinnati/Northern Kentucky International Airport (the "Airport"), (ii) paying interest on the 1992 Series B Bonds during construction, and (iii) paying certain costs of issuance of the 1992 Series B Bonds. The 1992 Series B Bonds are issued under and pursuant to a Trust Indenture, dated as of February 1, 1992 (the "Indenture"), between the Issuer and Star Bank, N.A., Cincinnati, Ohio, as Trustee. Simultaneously with the issuance of the 1992 Series B Bonds, the Issuer and Delta Air Lines, Inc. (the "Company") have entered into a Lease Agreement, dated as of February 1, 1992 (the "Agreement"), under which the Issuer has agreed to issue the 1992 Series B Bonds and the Company has

agreed to make certain rental payments to the Issuer sufficient to pay the principal of, redemption premium (if any) and interest on the 1992 Series B Bonds (and on all other Bonds, as hereinafter defined, issued under the Indenture) as the same become due and payable and to pay the purchase price, if any, of the 1992 Series B Bonds (and on all other Bonds issued under the Indenture) required to be purchased under the terms of the Indenture.

The 1992 Series B Bonds (and all other Bonds issued under the Indenture, including the Kenton County Airport Board Special Facilities Revenue Bonds, 1992 Series A (Delta Air Lines, Inc. Project) (the "1992 Series B Bonds") issued concurrently with the 1992 Series B Bonds) are equally and ratably secured by a pledge under the Indenture of the Trust Estate, which includes the Receipts and Revenues and any moneys realized by the Trustee under a Credit Facility, if any, as hereinafter described and all other moneys received by, or on behalf of, the Trustee, including, without limitation, moneys in the Bond Fund created under and held *by* the Trustee pursuant to the Indenture and all income and profit from the investment of such moneys, but does not include any moneys or investments held in any Rebate Fund created under the Indenture or in any Bond Purchase Fund created pursuant to the Indenture. The Issuer has assigned to the Trustee as security for the Bonds, its rights, title and interest in and to the Agreement (other than certain rights to indemnification and to payment of certain administrative expenses and certain other rights). The Indenture contains terms and conditions upon which additional bonds may be issued thereunder (such additional bonds, together with the 1992 Series *B* Bonds and the 1992 Series A Bonds, are hereinafter

collectively referred to as the "Bonds"). Such additional Bonds may be issued by the Issuer to finance Project Facilities located at the Cincinnati/Northern Kentucky International Airport or to refund all or any part of the Bonds of any series or of bonds previously issued by the Issuer for the benefit of the Company.

This Bond shall not, as of the Date of Issuance hereof, be secured by a Credit Facility. From and after such Date of Issuance, the 1992 Series B Bonds may be secured from time to time by moneys drawn by the Trustee under any Credit Facility which may be in effect from time to time with respect to the 1992 Series B Bonds.

The term of the 1992 Series B Bonds will be divided into consecutive Interest Rate Periods during each of which the 1992 Series B Bonds shall bear interest at a Weekly Interest Rate (a "Weekly Interest Rate Period"), a Long-Term Interest Rate (a "Long-Term Interest Rate Period"), or a Bond Interest Term Rate for one or more consecutive Bond Interest Terms (a "Short-Term Interest Rate Period"). The initial Interest Rate Period shall be a Long-Term Interest Rate Period from February 27, 1992 until the Maturity Dates of the 1992 Series B Bonds (subject to adjustment as hereinafter described) and during such period the 1992 Series B Bonds shall bear interest at the rate set forth on the first page hereof. Subject to certain conditions set forth in the Indenture, the interest rate on the 1992 Series B Bonds may be adjusted from the initial Long-Term Interest Rate Period to a Weekly Interest Rate or Bond Interest Term Rates at any time when the 1992 Series B Bonds may be redeemed at the option of the Company in accordance with the redemption provi-

sions described herein, and thereafter again adjusted as described in the Indenture. As hereinafter described, the 1992 Series S Bonds are subject to mandatory purchase on the first day of any Interest Rate Period, as hereinafter described.

This Bond shall bear interest from and including the Interest Accrual Date (hereinafter defined) immediately preceding the date of authentication hereof, or, if such date of authentication is an Interest Accrual Date to which interest on this Bond has been paid or duly provided for, or the date of initial authentication hereof, then from the date of authentication hereof; provided, however, if interest on the Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for registration of transfer or exchange shall bear interest from the date to which interest has been paid in full on the Bonds or if no interest has been paid on the Bonds, from February 1, 1992.

During any Weekly Interest Rate Period, interest on the Bonds shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Accrual Date (or, if any Interest Payment Date is not a Wednesday, commencing on the second preceding Interest Accrual Date) and ending on the Tuesday immediately preceding the Interest Payment Date (or, if sooner, the last day of the Weekly Interest Rate Period). During any Short-Term Interest Rate Period or Long-Term Interest Rate Period, interest on this Bond shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Accrual Date and ending on the day immediately preceding such Interest Payment Date. In any event, interest on this Bond shall be payable for the final Interest

Rate Period to the date on which this Bond shall have been paid in full. Interest shall be computed, in the case of a Long-Term Interest Rate Period, on the basis of a 360-day year consisting of twelve 30-day months, and in the case of any other Interest Rate Period, on the basis of a 365 or 366-day year, as appropriate, and the actual number of days elapsed. The Bonds may be issued in the form of fully registered Bonds in the denominations of (i) $5,000 and any integral multiple thereof during any Long-Term Interest Rate Period, and (ii) $100,000 and any integral multiple of $5,000 in excess of $100,000 during any Weekly Interest Rate Period or Short-Term Interest Rate Period (the "Authorized Denominations").

The term "Interest Accrual Date" means (i) with respect to any Weekly Interest Rate Period, the first day thereof and, thereafter, the first Wednesday of each calendar month during that Weekly Interest Rate Period, (ii) with respect to any Long- Term Interest Rate Period, the first day thereof and, thereafter, each Interest Payment Date in respect thereof, other than the last such Interest Payment Date, and (iii) with respect to each Bond Interest Term within a Short-Term Interest Rate Period, the first day thereof. The term "Interest Payment Date" means (1) with respect to any Weekly Interest Rate Period, the first Wednesday of each calendar month, or, if such first Wednesday shall not be a Business Day, the next succeeding Business Day, (2) with respect to any Long-Term-Interest Rate Period, the first day of a month and the first day of each sixth month thereafter, as determined by the Company, or if any of such days shall not be a Business Day, the next succeeding Business Day, the first Interest Payment Date during a Long-Term Interest Rate

Period being the first day of such month which is at least 90 days from the first day of such Long-Term Interest Rate Period, (3) with respect to any Bond Interest Term, the day next succeeding the last day thereof, and (4) with respect to each Interest Rate Period, the day next succeeding the last day thereof. The term "Business Day" means any day other than a Saturday, a Sunday or any other day on which banks located in the cities in which the principal offices of the Trustee, the Tender Agent, the Paying Agent, the Registrar, the Remarketing Agent, the Company, the Authenticating Agent and the issuer of any Credit Facility are located are authorized or required to remain closed.

The interest rate on the 1992 Series B Bonds shall be determined as follows:

(1) Weekly Interest Rate. During each Weekly Interest Rate Period, this Bond shall bear interest at the Weekly Interest Rate, which shall be determined by the Remarketing Agent on Tuesday of each week during such Weekly Interest Rate Period, or if such day shall not be a Business Day, then on the next succeeding Business Day. The first Weekly Interest Rate determined for each Weekly Interest Rate Period shall be determined on or prior to the first day of such Weekly Interest Rate Period and shall apply to the period commencing on the first day of such Weekly Interest Rate Period and ending on the next succeeding Tuesday. Thereafter, each Weekly Interest Rate shall apply to the period commencing on Wednesday and ending on the next succeeding Tuesday, unless such Weekly Interest Rate Period shall end on a day other than Tuesday, in which event the last Weekly Interest Rate for such Weekly Interest Rate Period shall apply to the period commencing on

Wednesday preceding the last day of such Weekly Interest Rate Period and ending on the last day of such Weekly Interest Rate Period. The Weekly Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent (based on the examination of tax-exempt obligations comparable in the judgment of the Remarketing Agent to the 1992 Series B Bonds and known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions) to be the minimum interest rate which, if borne by the 1992 Series B Bonds, would enable the Remarketing Agent to sell the 1992 Series B Bonds on such date of determination at a price (without regarding accrued interest) equal to the principal amount thereof. In the event that the Remarketing Agent fails to establish a Weekly Interest Rate for any week, then the Weekly Interest Rate for such week shall be the same as the Weekly Interest Rate for the immediately preceding week that was determined by the Remarketing Agent. In the event that the Weekly Interest Rate for the immediately preceding week was not determined by the Remarketing Agent, or in the event that the Weekly Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the interest rate for such week shall be calculated by the Trustee and shall be equal to 75% of the rate on 30-day High-Grade unsecured commercial paper notes sold through dealers by major corporations as reported in the Wall Street Journal on the day the Weekly Interest Rate would otherwise be determined as provided in the Indenture for such Weekly Interest Rate Period.

(2) Long-Term Interest Rate. During each Long-Term Interest Rate Period, the 1992 Series B Bonds shall bear interest at the Long-Term Interest Rate. The

Long-Term Interest Rate for the 1992 Series B Bonds shall be determined by the Remarketing Agent on a Business Day no later than the effective date of such Long-Term Interest Rate Period with respect to the 1992 Series B Bonds. The Long-Term Interest Rate (except for the initial Long-Term Interest Rate determined for this Bond) shall be the rate of interest per annum determined by the Remarketing Agent (based on the examination of tax-exempt obligations comparable in the judgment of the Remarketing Agent to the 1992 Series B Bonds and known by the Remarketing Agent to have been priced or traded under then-prevailing market conditions) to be the minimum interest rate at which the Remarketing Agent will agree to purchase the 1992 Series B Bonds on such effective date for resale at a price (without regarding accrued interest) equal to the principal amount thereof.

(3) Bond Interest Terms and Bond Interest Term Rates. During each Short-Term Interest Rate Period, this 1992 Series B Bond shall bear interest during each Bond Interest Term for this 1992 Series B Bond at the Bond Interest Term Rate for this 1992 Series B Bond. The Bond Interest Term and Bond Interest Term Rate for this 1992 Series B Bond shall be determined by the Remarketing Agent no later than the first day of each Bond Interest Term. The Bond Interest Term and the Bond Interest Term Rate need not be the same for any two 1992 Series B Bonds, even if determined on the same date. The Bond Interest Term for this 1992 Series B Bond shall be a period of not more than 270 days, determined by the Remarketing Agent to be the period which, together with all other Bond Interest Terms for all 1992 Series B Bonds then outstanding under the Indenture, will result in the lowest overall interest expense on such

1992 Series B Bonds over the next succeeding 270 days, taking into account certain factors set forth in the Indenture. Any 1992 Series B Bond purchased on behalf of the Company and remaining unsold by the Remarketing Agent as of the close of business on the first day of the Bond Interest Term for that 1992 Series B Bond shall have a Bond Interest Term of one day or, if that Bond Interest Term does not end on a day immediately preceding a Business Day, a Bond Interest Term ending on the day immediately preceding the next Business Day. If for any reason a Bond Interest Term for any 1992 Series B Bond cannot be so determined by the Remarketing Agent, or if the determination of such Bond Interest Term is held by a court of law to be invalid or unenforceable, then such Bond Interest Term shall be thirty days, but if the last day so determined shall not *be* a day immediately preceding a Business Day, shall end on the first day immediately preceding the Business Day next succeeding such last day, or if such last day would be after the day immediately preceding the Maturity Date, shall end on the day immediately preceding the Maturity Date.

The Registrar shall give notice by first class mail of any adjustment in the Interest Rate Period not less than twelve days prior to the effective date of such Interest Rate Period, or, in the case of an adjustment from a Long-Term Interest Rate Period, not less than thirty days prior to the effective date of such Long Term Interest Rate Period. In the event of an adjustment in the Interest Rate Period applicable to the 1992 Series B Bonds, the 1992 Series B Bonds shall be subject to mandatory tender for purchase as hereinafter described.

The Company shall have the right to deliver to the Trustee, Registrar, Remarketing Agent, Tender Agent, Paying Agent, Authenticating Agent and Credit Bank on or prior to 10:00 a.m., New York City time, on the effective date of any such adjustment of an Interest Rate Period a notice to the effect that the Company elects to rescind its election to make such adjustment. In connection with any adjustment of the Interest Rate Period on the Bonds, the Company (if such election is not rescinded as provided in the prior sentence) is obligated to cause to be provided to the Issuer, the Trustee, the Company and the Remarketing Agent a Favorable Opinion of Bond Counsel on the effective date of such adjustment. In addition, certain other conditions precedent exist to the conversion to a Long-Term Interest Rate Period as described in the Indenture. In the event that Bond Counsel fails to deliver a Favorable Opinion of Bond Counsel on the effective date of any adjustment in the Interest Rate Period, the Company rescinds its election to make such adjustment or the other conditions to adjustment of any Interest Rate Period as provided in the Indenture are not met, then the 1992 Series B Bonds shall continue to bear interest at a Weekly Interest Rate or Bond Interest Term Rates, as the case may be, as in effect immediately prior to such proposed adjustment in the Interest Rate Period, or, in the event that the 1992 Series B Bonds are being adjusted from a Long-Term Interest Rate Period, then the 1992 Series B Bonds shall be adjusted to bear interest at a Weekly Interest Rate on the date which would have been the effective date of such change in the Interest Rate; provided, however, that if notice of such adjustment has been mailed to the Owners of the 1992 Series B Bonds then the 1992 Series B Bonds shall continue to be

subject to mandatory tender for purchase on the date that would have been the effective date of such adjustment as provided below.

Purchase of 1992 Series B Bonds During Weekly Interest Rate Period. During any Weekly Interest Rate Period, this 1992 Series B Bond shall be purchased (in whole) at the option of the Owner on any Business Day at a purchase price equal to the principal amount hereof plus accrued interest, if any, from and including the Interest Accrual Date immediately preceding the date of purchase through and including the day immediately preceding the date of purchase, unless the date of purchase shall be an Interest Accrual Date, in which case at a purchase price equal to the principal amount hereof, payable by wire transfer in immediately available funds, upon delivery to the Tender Agent at its Principal Office for delivery of notices of an irrevocable written notice which states the principal amount of this Bond and the date on which the same shall be purchased, which date shall be a Business Day not prior to the seventh day next succeeding the date of the delivery of such notice to the Tender Agent. Any notice delivered to the Tender Agent after 4:00 p.m., New York City time, shall be deemed to have been received on the next succeeding Business Day. For payment of such purchase price on the date specified in such notice, this Bond must be delivered, at or prior to 10:00 a.m., New York City time, on the date specified in such notice, to the Tender Agent at its Principal Office for delivery of Bonds, accompanied by an instrument of transfer hereof, in form satisfactory to the Tender Agent, executed in blank by the Owner hereof or his duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock

Exchange, Inc. In the event this Bond is in Book-Entry Only System format, Depository Trust Company shall deliver to the Tender Agent such documentation and information as required by the Tender Agent.

Mandatory Tender for Purchase On Day Next Succeeding the Last Day of Each Bond Interest Term. On the day next succeeding the last day of each Bond Interest Term for this 1992 Series B Bond, unless such day is the first day of a new Interest Rate Period, this 1992 Series B Bond shall be purchased from its Owner at a purchase price equal to the principal amount hereof, payable in immediately available funds, if this 1992 Series B Bond is delivered to the Tender Agent on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., on the next succeeding Business Day. The purchase price of this 2992 Series B Bond so purchased shall be payable only upon surrender of this 1992 Series B Bond to the Tender Agent at its Principal Office for delivery of 1992 Series B Bonds, accompanied by an instrument of transfer hereof, in form satisfactory to the Tender Agent, executed in blank by the Owner hereof or his duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange, Inc.

Mandatory Tender for Purchase on First Day of Each Interest Rate Period. This 1992 Series B Bond shall be subject to mandatory tender for purchase on the first day of each Interest Rate Period for the 1992 Series B Bonds, or on the day which would have been the first day of an Interest Rate Period in the event that one of the conditions precedent to the adjustment to a new Interest Rate Period shall not be met

or the Company shall have rescinded its election to make such adjustment, as described in the Indenture, at a purchase price, payable in immediately available funds, equal to the principal amount hereof or, in the case of a purchase on the first day of an Interest Rate Period which shall be preceded by a Long-Term Interest Rate Period and which shall commence prior to the day originally established as the last day of such preceding Long-Term Interest Rate Period, at a purchase price equal to the optional redemption price set forth herein which would have been applicable to such Bonds on such date if such preceding Long-Term Interest Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

Mandatory Tender for Purchase Upon Termination, Expiration, Reduction, Modification or Replacement of Credit Facility. As a result of (1) the termination or expiration of any Credit Facility then in effect for the 1992 Series B Bonds, (2) the occurrence of an event of default under the Reimbursement Agreement relating to such Credit Facility (the "Reimbursement Agreement") or (3) such Credit Facility being reduced, replaced or modified with the effect that this 1992 Series B Bond is no longer payable from such Credit Facility (in each case, whether or not any Alternate Letter of Credit or Alternate Credit Facility has been obtained) or the amount of coverage with respect thereto being reduced or not being reinstated following a draw on the Credit Facility with respect to interest on this Bond, then (but only in the circumstances where the Letter of Credit has not been renewed or replaced by an Alternate Letter of Credit issued and delivered at least forty-five days prior to the termination, expiration, reduction or modification on the fifth day preceding any termination, expira-

tion, reduction or modification of the Credit Facility, or, in the case of the failure of the Credit Bank to reinstate the amount payable on the Credit Facility as to interest within the time permitted thereby, a Business Day not less than ten days but not more than fifteen days after the Credit Bank shall have failed to reinstate the amount payable on the Credit Facility with respect to interest, this Bond shall be purchased or deemed purchased. The purchase price for this Bond if so purchased shall be equal to the principal amount of this Bond plus accrued interest plus redemption premium (if any).

The purchase price of this Bond if so purchased shall be payable only upon delivery of this Bond to the Tender Agent at its principal office for the delivery of Bonds, accompanied by an instrument of transfer hereof, in form satisfactory to the Tender Agent, executed in blank by the Owner hereof or his duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange, Inc., at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in the notice of such expiration or termination of the Credit Facility delivered pursuant to the Indenture, or, if no such date shall have been so specified, on the fifth Business Day preceding such expiration, termination, reduction or modification of the Credit Facility. In the event that, as a result of any such expiration, termination, replacement, reduction or modification of the Credit Facility, the Tender Agent (upon receipt from the Owner thereof in exchange for payment of the purchase price thereof) shall present this Bond to the Registrar for notation thereon of any distinguishing mark required to be included thereon at the request of any rating agency then rating such Bonds or at the request of

the Company. In the event that in connection with any reduction of the amounts payable under the Credit Facility, the Company shall deliver to the Trustee, the Tender Agent, the Remarketing Agent and the Registrar, prior to the date that notice of such reduction is given by the Registrar, written evidence from Moody's, if the 1992 Series B Bonds are then rated by moody's, or S&P, if the 1992 Series B Bonds are then rated by S&P, to the effect that such reduction, in and of itself; will not result in the withdrawal or reduction of the rating(s) then applicable to the 1992 Series B Bonds and a Favorable Opinion of Bond Counsel, then the 1992 Series B Bonds shall not be subject to mandatory tender for purchase as a result of such reduction.

The giving of notice by an Owner of this 1992 Series B Bond that such Owner elects to have this 1992 Series B Bond purchased during a Weekly Interest Rate Period as described above shall constitute the irrevocable tender for purchase of this 1992 Series B Bond with respect to which such notice shall have been given regardless of whether this 1992 Series B Bond shall be delivered to the Tender Agent for purchase on the relevant purchase date as provided in the Indenture.

The Tender Agent may refuse to accept delivery of any 1992 Series B Bond for which a proper instrument of transfer has not been provided; such refusal, however, shall not affect the validity of the purchase of this 1992 Series B Bond as herein described. If any Owner of a 1992 Series B Bond who shall have given notice of tender of purchase pursuant hereto or any Owner of a 1992 Series B Bond subject to mandatory tender for purchase pursuant hereof shall fail to deliver such 1992 Series B Bond properly endorsed to

the Tender Agent for such 1992 Series B Bond at the place and on the applicable date and at the time specified, such 1992 Series B Bond shall constitute an Undelivered Bond. If funds in the amount of the purchase price of any Undelivered Bond are available for payment to the Owner thereof on the date and at the time specified, then from and after the date and time of that required delivery, (1) such Undelivered Bond shall no longer be deemed to be outstanding under the Indenture; (2) interest shall no longer accrue thereon; and (3) funds in the amount of the purchase price of the Undelivered Bond shall be held by the Tender Agent for the benefit of the Owner thereof, to be paid upon delivery (and proper endorsement) of the Undelivered Bond to the Tender Agent at its Principal Office for delivery of 1992 Series B Bonds. Any funds held by the Tender Agent for the purchase of Undelivered Bonds shall be held uninvested.

No Remarketing Agent shall be appointed for the 1992 Series B Bonds on the Date of Issuance of such Bonds. The Company may, with the consent of the Issuer, appoint a Remarketing Agent for the 1992 Series B Bonds after such Date of Issuance; provided, however, that a Remarketing Agent shall be appointed by the Company prior to the time a Remarketing Agent shall be required to perform the duties and obligations imposed upon it under the Indenture. Any Remarketing Agent so appointed shall designate its Principal Office and signify its acceptance of the duties and obligations imposed upon it under the Indenture by written instrument.

Redemption Provisions. The 1992 Series B Bonds shall be subject to redemption prior to maturity as follows:

(a) (i) On any Interest Payment Date during a Weekly Interest Rate Period, the 1992 Series B Bonds shall be subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at a redemption price of par; and

(ii) On the day succeeding the last day of any Bond Interest Term with respect to any 1992 Series B Bond, such 1992 Series B Bond shall be subject to optional redemption by the Issuer, at the direction of the Company, in whole or in part, at a redemption price of par.

(b) (i) During the Long-Term Interest Rate Period commencing on the Date of Issuance of the 1992 Series B Bonds, the 1992 Series B Bonds shall be subject to optional redemption as follows:

The 1992 Series B Bonds maturing on

February 1, ___ are subject to redemption by the Issuer, at the direction of the Company, at any time and from time to time, in whole or in part, on or after February 1,___ upon written notice of the exercise of the option to redeem delivered to the Issuer and the Trustee by the Company, at the redemption prices (expressed as a percentage of the principal amount thereof) and during the redemption periods set forth below, plus accrued interest, if any, to the date fixed for redemption:

Redemption Periods (Both Dates Inclusive)	Redemption Prices (Percentage of Principal Amount)
February 1, _ to January 31, ___	
February 1, _ to January 31, ___	
February 1, _ and thereafter	

(c) During any Long-Term Interest Rate Period the 1992 Series B Bonds (except during the Long-Term

Interest Rate Period for the 1992 Series B Bonds commencing on the Date of Issuance of the 1992 Series B Bonds) shall be subject to optional redemption by the Issuer, at the direction of the Company, on the first day thereof, in whole or in part, at the redemption price of par, and thereafter, during the periods specified below or, if a Favorable Opinion of Bond Counsel is delivered as provided in the Indenture, during the periods specified in the notice of the Company to the Registrar pursuant to the Indenture, in whole at any time or in part from time to time, at the redemption prices (expressed as a percentage of principal amount) hereinafter indicated or specified in the notice of the Company to the Registrar pursuant to the Indenture, plus accrued interest, if any, to the redemption date.

Length of Long-Term Interest Rate Period (expressed in years)	Redemption Prices
greater than 15	after 10 years at 102%, declining by 1% every year to 100%
less than or equal to 15 and greater than 10	after 7 years at 102%, declining by 1% every year to 100%
less than or equal to 10 and greater than 7	after 5 years at 102%, declining by 1% every year to 100%
less than or equal to 7 and greater than 4	after 3 years at 101%, declining by 1% every year to 100%
less than or equal to 4	after 2 years at 100%

(d) The 1992 Series B Bonds shall be subject to extraordinary optional redemption by the Issuer, at the direction of the Company, in whole or in part at

any time at a redemption price of par plus accrued interest, if any, to the redemption date, if the Company shall deliver to the Trustee a certificate of an Authorized Company Representative certifying that:

(i) The Company shall have determined, in its sole discretion, that the continued operation of one or more of the Project Facilities or a substantial portion of one or more of the Project Facilities is impracticable, uneconomical or undesirable for any reason, including, without limitation, the imposition upon the Company with respect thereto of unreasonable burdens or excessive liabilities, which shall be deemed to include, without limitation, the imposition or substantial increase of ad valorem property taxes or taxes on the leasing or use of the Project Facilities or a substantial portion thereof or on amounts payable with respect thereto; or

(ii) All or a substantial portion of one or more of the Project Facilities shall have been damaged, destroyed, condemned or taken by eminent domain or sold under a reasonably apprehended threat of condemnation or such portion of one or more of the Project Facilities or the use or control thereof shall have been condemned or taken by eminent domain or sold under a reasonably apprehended threat of condemnation as to render the Project Facilities or a substantial portion of one or more of the Project Facilities unsatisfactory for their intended uses, as determined by the Company in its sole discretion; or

(iii) the construction or operation of one or more of the Project Facilities or a substantial portion or one or more of the Project Facilities shall have been enjoined or prevented or shall have otherwise been prohibited by, or shall conflict with, any order, decree, rule or regulation of any court or of any fed-

eral, state or local regulatory body, administrative agency or other governmental body.

To exercise any such option with respect to all or a portion of the 1992 Series B Bonds, the Company shall give written notice to the Trustee, which notice shall specify the Project Facilities affected by the above specified events and the principal amount of Bonds of such Series to be redeemed, including the maturity or maturities of the 1992 Series B Bonds to be redeemed. Such notice shall also specify a redemption date, which date may not be earlier than 30 days after such notice is given, and shall further specify that, as determined by the Company, one or more of such events has occurred or one or more of such conditions is continuing, which determination shall be conclusive.

(e) The 1992 Series B Bonds shall be subject to mandatory redemption by the Issuer, in whole, or in such part as will, in the opinion of Bond Counsel, preserve the exclusion from gross income for federal income tax purposes of the interest on the 1992 Series B Bonds remaining Outstanding, or either of such Series, at a redemption price of par, plus accrued interest, if any, to the redemption date, on the 180th day (or such earlier date as may be designated by the Company) after a Determination of Taxability (provided however, that if the lien of the Indenture has been defeased prior to a Determination of Taxability, the 1992 Series B Bonds will not be subject to redemption, except for any redemption provided for in connection with such defeasance.

(f) The 1992 Series B Bonds, or an appropriate allocable portion thereof, shall be redeemed by the Issuer at a redemption price equal to 100% of the principal amount thereof, without redemption premium, plus accrued interest, if any, to the redemp-

tion date, within 60 days (i) following the automatic termination of the Agreement as to the Project Facilities located on a site covered by any ground lease as a result of the termination of such ground lease in accordance with its terms, or (ii) following the failure by the Company, at any time during which any 2992 Series B Bonds are outstanding, to exercise any option to renew the term of the Agreement as to the Project Facilities, or portion thereof, then existing and leased under the Agreement on the applicable term expiration date subsequent to the expiration of the initial term thereof, which initial term expires on December 31, 2015.

(g) Any Series of Additional Bonds shall be subject to any mandatory sinking fund redemptions provided in the Supplemental Indenture providing for the issuance of such Series of Additional Bonds.

(h) Any Series of Additional Bonds shall be subject to any optional redemptions provided in the Supplemental Indenture providing for the issuance of such Series of Additional Bonds.

If less than all of the Bonds at the time outstanding are to be called for redemption, the particular Bonds or units thereof in Authorized Denominations shall be selected by the Registrar, by lot in such manner as the Registrar in. its discretion may deem proper. Any Bonds and portions of Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with the Indenture shall cease to bear interest on the specified redemption date and shall thereafter cease to be entitled to any lien, benefit or security under the Indenture.

The transfer of this 1992 Series B Bond shall be registered upon the registration books kept at the principal corporate trust office of the Registrar, upon

surrender of this 1992 Series B Bond at said office, together with the attached instrument of transfer duly executed by the Owner or his duly authorized attorney.

The Owner of this 1992 Series B Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

With certain exceptions as provided therein, the Indenture and the Agreement may be modified or amended only with the consent of the Owners of not less than a majority in aggregate principal amount of all Bonds outstanding under the Indenture.

Reference is hereby made to the Indenture and the Agreement, copies of which are on file with the Trustee, for the provisions, among others, with respect to the nature and extent of the rights, duties and obligations of the Issuer, the Company, the Trustee, the Paying Agent, the Registrar, the Tender Agent, if any, the Authenticating Agent and the Remarketing Agent, if any, appointed pursuant to the Indenture and the Owners of the Bonds. The Owner of this 1992 Series B Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Indenture and the Agreement.

The Issuer, the Trustee, the Registrar, the Paying Agent, the Tender Agent, the Authenticating Agent and the Remarketing Agent may deem and treat the person in whose name this Bond is registered on the registration books of the Issuer maintained by the Registrar as the absolute owner hereof for all purposes, whether or not this Bond is overdue, and nei-

ther the Issuer, the Trustee, the Registrar, the Paying Agent, the Tender Agent, the Authenticating Agent nor the Remarketing Agent shall be affected by any notice to the contrary.

No covenant or agreement contained in this 1992 Series B Bond, the Indenture or the Agreement shall be deemed to be the covenant or agreement of any elected or appointed Chairman, Secretary-Treasurer, Board member, officer, agent, servant or employee of the Issuer in his individual capacity, and neither the members of the governing body of the Issuer, nor any official executing this 1992 Series B Bond, shall be liable personally on this 1992 Series B Bond or be subject to any personal liability or accountability by reason of the issuance of this 1992 Series B Bond.

[Form for Transfer]

COMPLETE AND SIGN THIS FORM FOR REGISTRATION OF TRANSFER

For value received _____ hereby sells, assigns and transfers unto _____ this 1992 Series B Bond and hereby irrevocably constitute and appoints _____ Attorney to register such transfer on the books of registration in the office of the Registrar with full power of substitution in the premises.

Dated: _____

Signature Guaranteed by:

NOTE: The signature on this Signature assignment must correspond with the name as written on the face of this Bond in every particular, without alteration, enlargement or any change whatsoever.

Commercial Bank, Trust Company or Member Firm of New York Stock Exchange, Inc.

EXHIBIT B TO ORDER

LEASE AGREEMENT

by and between

KENTON COUNTY AIRPORT BOARD
(KENTUCKY)

and

DELTA AIR LINES, INC.

Dated as of February 1, 1992

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of February 1, 1992, is between the KENTON COUNTY AIRPORT BOARD (the "Issuer"), a public body corporate and politic and a political subdivision of the Commonwealth of Kentucky, duly organized and validly existing under the laws of the Commonwealth of Kentucky, including Chapter 183 of the Kentucky Revised Statutes, and DELTA AIR LINES, INC., a corporation duly organized and validly existing under the laws of the State of Delaware, and duly qualified to do business in the Commonwealth of Kentucky (the "Company")

WHEREAS, the Company has previously requested the Issuer to authorize and issue, for the benefit of the Company, one or more series of Special Facilities Revenue Bonds pursuant to the statutory authority of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, for the purpose of funding qualified airport facilities to be used by the Company in the operation of its airline transportation business at the Cincinnati/Northern Kentucky International Airport; and

WHEREAS, in accordance with such requests by the Company, the Issuer adopted a Resolution on November 19, 1990 agreeing to the issuance of such Special Facilities Revenue Bonds, to be paid solely and only by lease payments and other payments to be made by the Company or from the proceeds of such Bonds or the proceeds of Special Facilities Revenue Bond-financed property; and

WHEREAS, the Company has, pursuant to the foregoing, caused to be designed and has initiated construction and acquisition of, certain airport facil-

ities to the Company's specifications to meet the Company's special private air transportation business needs and purposes, which will be exclusively leased by the Company under this Agreement for the periods specified herein and which will be principally financed pursuant to KRS Sections 103.200 to 103.285, inclusive; and

WHEREAS, the details and provisions of the Special Facilities Revenue Bond financing transaction have now been formulated, and it is appropriate that Special Facilities Airport Revenue Bonds be authorized and issued at this time, and in connection therewith that this Lease Agreement be executed and delivered by the parties hereto;

WITNESSETH:

For and in consideration of the premises and the mutual representations and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a general debt of the Issuer or give rise to any general pecuniary liability of the Issuer but shall be payable solely out of the funds and moneys provided for the payment of such obligations, including the Receipts and Revenues):

(End of Preambles)

ARTICLE I.

DEFINITIONS

Section 1.01. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or in the Indenture or by reference to

another document, the words and terms set forth in Section 1.02 and 1.03 shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.02. Incorporation of Certain Terms by Reference. When and if used in this Agreement, the following terms shall have the meaning set forth in Section 1.01 of the Indenture:

"Act"
"Additional Bonds"
"Agreement"
"Airport"
"Authenticating Agent"
"Authorized Company Representative"
"Bankruptcy Code"
"Bond" or "Bonds"
"Bond Counsel"
"Bond Fund"
"Business Day"
"Code"
"Company"
"Construction Fund"
"Costs of Construction"
"Counsel"
"Date of Issuance"
"Duff"
"Government Obligations"
"Indenture"
"Interest Payment Date"
"Investment Securities"
"Issuer"
"Moody's"

"Outstanding"
"Owner"
"Paying Agent"
"Rating Category"
"Rebate Fund"
"Receipts and Revenues"
"Registrar"
"Reserved Rights"
"Series" or "Series of Bonds"
"S&P"
"Tax Counsel"
"Trustee"
"Unassigned Rights"
"Undelivered Bonds"
"1992 Series A Bonds"
"1992 Series B Bonds"
"1992 Series A and/or B Bonds"

Section 1.03. Additional Definitions. In addition to the terms whose definitions are incorporated by reference herein pursuant to Section 1.02, the following terms shall have the meanings set forth in this Section unless the use or context clearly indicates otherwise:

"Acquisition and Construction" means, as appropriate, any design and any temporary or permanent acquisition, construction, equipping, demolition, installation, additional improvement to, restoration, reacquisition, expansion, reconstruction, reproduction or reequipping of the Project Facilities and including any related and necessary demolition of existing facilities or improvements.

"Administration Expenses" shall mean the reasonable administrative expenses incurred by the Issuer with respect to the Bonds, the Indenture and this Agreement (except for expenses incurred by the

Issuer pursuant to Section 4.02(d) hereof and expenses of the Issuer excluded from indemnification pursuant to Section 6.08 hereof), including, without limitation, the reasonable fees and disbursements of Counsel and out-of-pocket expenses of the Issuer incurred in connection with the authorization, issuance and sale of the Bonds and the compensation and reimbursement of reasonable fees, expenses and advances payable to the Trustee, the Registrar, the Paying Agent and the Authenticating Agent (including the reasonable fees and expenses of their counsel) under the Indenture.

"Authorized Issuer Representative" means such person at the time designated by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by its Chairman or its Secretary-Treasurer, to act on behalf of the Issuer. Such certificate shall designate an alternate or alternates.

"Bond Resolution" shall mean the resolution of the Issuer adopted on February 13, 1992, authorizing the issuance and sale of the 1992 Series A and B Bonds and authorizing the execution, delivery and performance of this Agreement and the Indenture and determining other matters in connection therewith.

"Commonwealth" means the Commonwealth of Kentucky.

"Completion Date" means the date of completion of the Acquisition and Construction of the Project Facilities financed by each of the 1992 Series A Bonds and the 1992 Series B Bonds, including the installation of equipment, if any, as such date or dates shall be certified as provided in Section 3.04 hereof.

"Gross Award" means the total of amounts awarded to or received by the Issuer and/or the Company as damages, compensation or otherwise, by reason of the taking of the Project Facilities or any part thereof as a result of or in anticipation of the exercise of the right of condemnation or eminent domain. The term "Gross Award" shall include any amounts awarded as damages, compensation or otherwise by reason of the taking as a result of or in anticipation of the exercise of the right of condemnation or eminent domain of any of the land leased to the Company pursuant to any ground lease.

"Net Proceeds" means the gross proceeds from the policy or policies of property insurance required to be procured and maintained pursuant to Section 5.06 remaining after payment of all expenses (including attorney's fees and any extraordinary fee of the Trustee) incurred in the collection of such gross proceeds.

"Person" means any natural person, corporation, cooperative, partnership, trust or unincorporated organization, government or governmental body or agency, political subdivision or other legal entity as in the context may be appropriate.

"Plans and Specifications" means the plans and specifications for the Acquisition and Construction of the Project Facilities, prepared by the Company and approved by the Issuer, as the same may be supplemented, amended or modified from time to time upon the approval of the Issuer, and shall include all plans and specifications prepared by the Company and approved by the Issuer for any addition or improvement to, or any restoration, reacquisition, expansion, reconstruction, reproduction or reequipping of the Project Facilities. All such Issuer approvals shall be solely for the purpose of assuring compatibility of the

Project Facilities with existing Airport facilities and with the continuous operation of the Airport. Such Issuer approvals shall not be unreasonably withheld.

"Project Facilities" shall mean the (i) airport facilities and improvements and (ii) governmental facilities and improvements Acquired and Constructed by application of the proceeds of the 1992 Series A and B Bonds, described in Exhibit A attached hereto, as such exhibit may be amended from time to time, and including, until completion thereof, inter alia, certain temporary facilities, necessary utilities, public ways, thoroughfares and roads, fuel farm facilities and bag claim and emergency bag claim make-up replacement facilities. The particular Project Facilities to be financed by application of the proceeds of (i) the 1992 Series A Bonds and (ii) the 1992 Series B Bonds are identified with particularity in Exhibit A.

Section 1.04. Interpretation. Any reference herein to the Issuer or to any member or officer thereof includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the Commonwealth or the Act, or to a section, provision or chapter of the Kentucky Revised Statutes, as amended, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or

obligations of the Issuer, the Owners of the Bonds, the Trustee or the Company under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof", "hereby", "herein", "hereto", "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" mean before, the date of delivery of the 1992 Series A and B Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Any reference to an Article number (e.g., Article IV) or a Section number (e.g., Section 8.03) without further qualification shall be construed to be a reference to the designated Article number or Section number hereof unless the use or context clearly indicates otherwise.

Section 1.05. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II.

REPRESENTATIONS

Section 2.01. Representations, Warranties and Covenants of the Issuer. The Issuer makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) Organization and Authority. The Issuer is a public body corporate and politic and a political sub-

division of the Commonwealth of Kentucky, created and validly existing pursuant to the Constitution and the laws of the Commonwealth, including particularly the provisions of Chapter 183 of the Kentucky Revised Statutes. Under existing statutes and decisions, no taxes on income or profits are imposed on the Issuer. The Issuer has all requisite power and authority under the Act and has taken all necessary actions (i) to adopt the Bond Resolution, (ii) to issue the 1992 Series A and B Bonds, (iii) to apply the proceeds of the 1992 Series A and B Bonds to the Acquisition and Construction of the Project Facilities for which such proceeds may be used, (iv) to lease the Project Facilities to the Company pursuant to this Agreement and (v) to enter into, and perform its obligations under, this Agreement and the Indenture. To the best of its knowledge, the Issuer is not in default under any of the provisions of the Constitution or laws of the Commonwealth which default would affect its existence or its powers referred to, in this Section 2.01.

(b) Pending Litigation. There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Issuer threatened, against or affecting the Issuer in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement, or the Indenture or which, in any way, could adversely affect the validity or enforceability of the 1992 Series A and B Bonds, the Indenture or this Agreement or the ability of the Issuer to perform its obligations under any of the foregoing.

(c) Agreements Are Legal and Authorized. The adoption of the Bond Resolution, the issuance and

sale of the 1992 Series A and B Bonds and the execution and delivery by the Issuer of this Agreement and the Indenture, and the compliance by the Issuer with all of the provisions of each thereof and of the 1992 Series A and B Bonds (i) are within the powers and authority of the Issuer, (ii) have been done in full compliance with the provisions of the Act, are legal and will not conflict with or constitute on the part of the Issuer a violation of or a breach of or default under, or result in the creation of any lien, charge or encumbrance upon any property of the Issuer (other than as contemplated by this Agreement and the Indenture) under, the provisions of any by-law or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of the Issuer.

(d) Governmental Consents. Neither the nature of the Issuer nor any of its activities or properties, nor any relationship between the Issuer and any other Person, nor any circumstance in connection with the offer, issue, sale or delivery of any 1992 Series A and B Bonds is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority, board, agency or commission having jurisdiction on the part of the Issuer in connection with or as a condition precedent to the execution, delivery and performance of this Agreement and the Indenture or the offer, issue, sale or delivery of the 1992 Series A and B Bonds, other than those already obtained or filed as of the Date of Issuance; provided,

however, no representation is made herein as to compliance with the securities or "blue sky" laws of any jurisdiction.

(e) Maintenance of Exempt Status. So long as any 1992 Series A or B Bond remains Outstanding, the Issuer will not cause the Plans and Specifications to be changed or revised, or the Project Facilities to be operated, maintained, repaired or renovated, in a manner such that the Project Facilities financed by the proceeds of the 1992 Series A Bonds will not qualify as an airport or facilities functionally related and subordinate to an airport within the meaning of Section 142 of the Code and the income tax regulations promulgated thereunder or such that the Project Facilities financed by the proceeds of the 1992 Series B Bonds will not qualify as a governmental purpose or program consisting of public ways, thoroughfares and roads for the use of the traveling public.

(f) No Defaults. No event has occurred and no condition exists with respect to the Issuer which would constitute an Event of Default under this Agreement or the Indenture or which, with the lapse of time or with the giving of notice or both, would become an Event of Default under this Agreement or the Indenture.

(g) No Prior Pledge. Neither this Agreement nor the Receipts and Revenues have been or will be pledged, assigned or hypothecated by the Issuer, in whole or in part, in any manner or for any purpose other than as provided in the Indenture as security for the payment of the interest, principal and premium on the 1992 Series A and B Bonds.

(h) Limited Obligations. Notwithstanding anything herein contained to the contrary, any obligation the Issuer may hereby incur for the payment of money shall not constitute a debt or a pledge of the faith and credit of the Issuer or of the Commonwealth or of any political subdivision thereof, but shall be special and limited obligations of the Issuer payable solely from (i) the Receipts and Revenues, (ii) proceeds derived from the sale of the 1992 Series A and B Bonds and (iii) amounts on deposit from time to time in the Bond Fund, subject to the provisions of this Agreement and the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein and therein.

(i) Cooperation. The Issuer agrees to cooperate with the Company in connection with the Acquisition and Construction of the Project Facilities and in the procurement from the appropriate state, county, municipal and other authorities and corporations, of connection and discharge arrangements for the supply of water, gas, electricity, telephone and other utilities and sewage and industrial waste disposal for the operation of the Project Facilities.

Section 2.02. No Warranty by Issuer of Condition or Suitability of the Project Facilities. The Issuer makes no warranty, either express or implied, as to the suitability or utilization of the Project Facilities or as to the condition of the Project Facilities or that it is or will be suitable for the Company's purposes or needs.

Section 2.03. Representations, Warranties and Covenants of the Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) Corporate Organization and Power. The Company (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business and is in good standing under the laws of the Commonwealth, and (ii) has all requisite power and authority and all material licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted and to enter into and to perform and observe the agreements on its part contained in this Agreement and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Pending Litigation. There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal which, in the Company's opinion, are likely to materially and adversely affect the transactions contemplated by this Agreement or the Indenture, or which, in any way, adversely affect the validity or enforceability of the 1992 Series A and B Bonds, the Indenture or this Agreement.

(c) Agreements Are Valid and Authorized. The execution and delivery by the Company of this Agreement, and the compliance by the Company with all of the provisions hereof and thereof and the consummation of the transactions contemplated hereby and thereby will not (i) materially conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a material default under, any agreement, charter document, by-law or other instrument to which the Company is a party or by which it may be bound, or any licenses,

judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties, or (ii) result in the creation or imposition of any prohibited material lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to the extent that any of the events described in clauses (i) and (ii) would have a material adverse effect on the financial condition of the Company.

(d) Governmental Consent. In connection with the transactions contemplated by this Agreement and the Indenture, no circumstances in connection with the execution, delivery and performance by the Company of this Agreement or the offer, issue, sale or delivery by the Issuer of the 1992 Series A and B Bonds, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Company, other than those already obtained as of the Date of Issuance of the 1992 Series A and B Bonds; provided, however, no representation is made herein as to compliance with the securities or "blue sky" laws of any jurisdiction.

(e) No Defaults. No event has occurred and no condition exists with respect to the Company that would constitute an Event of Default under this Agreement or which, with the lapse of time or with the giving of notice or both, would become an Event of Default under this Agreement.

(f) Consents and Permits. All necessary orders, consents, authorizations, permits, licenses and approvals legally required by governmental authorities to be obtained by the Company as of the date hereof

in connection with the Acquisition and Construction of the Project Facilities have been obtained and are in full force and effect, and the Company knows of no reason why it cannot obtain all other necessary orders, consents, authorizations, permits, licenses and approvals legally required by governmental authorities to be obtained by the Company after the date hereof in connection with the completion of the Acquisition and Construction and the operation of the Project Facilities.

(g) Maintenance of Exempt Status. So long as any 1992 Series A or 1992 Series B Bond remains Outstanding, the Company will not cause the Plans and Specifications to be changed or revised, or the Project Facilities to be operated, maintained, repaired or renovated, in a manner such that the Project Facilities financed with the proceeds of the 1992 Series A Bonds will not qualify as an airport or facilities functionally related and subordinate to an airport within the meaning of Section 142 of the Code and the income tax regulations promulgated thereunder and such that the Project Facilities financed with the proceeds of the 1992 Series B Bonds will not qualify as a governmental purpose and project consisting of public ways, thoroughfares and roads for the use of the general public.

(h) Useful Life of Project Facilities. The average reasonably expected useful life of the Project Facilities to be financed with the proceeds of the 1992 Series A Bonds, excluding the Related Facilities as defined in subparagraph (p) hereof, calculated in accordance with Section 147(b) of the Code is 42.52 years.

(i) First Use of Project Facilities. The acquisition and construction of the Project Facilities to be

financed with the proceeds of the 1992 Series A Bonds shall constitute the first use of such property within the meaning of Section 147(d) of the Code and the rules and regulations promulgated thereunder.

(j) Prohibited Expenditures. No land, aircraft, skybox, or other private luxury box, health club facility, facility primarily used for gambling, store the principal business of which is the sale of alcoholic beverages for consumption off premises, private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including handball or racquetball courts), hot tub facility, suntan facility, racetrack, impermissable retail food and drink establishments, automobile sales or service or provision of recreation or entertainment will be financed from the proceeds of the 1992 Series A and B Bonds.

(k) 1992 Series A and B Bonds Not Federally Guaranteed. The 1992 Series A Bonds and the 1992 Series B Bonds are not and will not be "federally guaranteed" (as defined in and as provided by Section 149(b) of the Code).

(l) Average Maturity of 1992 Series A Bonds. In accordance with Section 147(b) of the Code, the average maturity of the 1992 Series A Bonds does not exceed 120% of the average reasonably expected economic life of the Project Facilities to be financed with the proceeds of the 1992 Series A Bonds.

(m) Purpose of Expenditures; 1992 Series A. At least ninety-five per cent (95%) of the net proceeds of the 1992 Series A Bonds and interest thereon (i) will be used to provide property chargeable to the capital account of the Project Facilities financed by proceeds

of the 1992 Series A Bonds for federal income tax purposes and subject to Section 167 of the Code, and will be used either to provide qualified airport facilities or properties functionally related and subordinate thereto which shall serve or be available on a regular basis for the general public use, all within the meaning of Sections 142(a), (b) and (c) of the Code and applicable Income Tax Regulations promulgated thereunder and (ii) shall be expended on costs incurred after the date of adoption of the preliminary approving resolution of the Issuer adopted in respect of the acquisition, construction and financing of the Project Facilities being, to wit: November 19, 1990.

(n) Purpose of Expenditures: 1992 Series B. At least ninety per cent (90%) of the net proceeds of the 1992 Series B Bonds and interest thereon will be used for the governmental purpose of the 1992 Series B Bonds, to wit: to finance Acquisition and Construction of the Project Facilities financed by proceeds of the 1992 Series B Bonds and there are no facilities financed which are unrelated to the public ways, thoroughfares and roads for the use of the traveling public constituting such Project Facilities. All of the expenditures for payment of Acquisition and Construction of the Project Facilities were made or incurred, or will be made and incurred after November 19, 1990.

(o) Ground Lease. The Company covenants to enter into one or more ground leases or similar undertakings with the Issuer, to lease land upon which or in proximity to which the Project Facilities will be Acquired and Constructed, to the extent such Project Facilities do not constitute Related Facilities constituting (i) public ways, thoroughfares and roads

and (ii) relocated or replaced utilities, as described in clause (p) of this Section 2.03.

(p) Related Facilities. As described in Section C of Exhibit A hereto, construction of the Project Facilities will result in the demolition of certain bag claim and bag make-up facilities financed with the proceeds of a previous special facility bond issue. A portion of the proceeds of the 1992 Series A Bonds will be used to provide comparable facilities providing essentially similar functional services. In addition, a portion of the proceeds of the 1992 Series A Bonds will be used for the modification and expansion of certain fueling facilities, as further described in Exhibit A hereto. The proceeds of the 1992 Series B Bonds will be used to finance certain necessary public ways, thoroughfares and roads in order to integrate the Project Facilities with the operations of the Airport and make the same compatible therewith upon completion, as further described in Exhibit A hereto. Additionally, certain utilities will be relocated or replaced. All such facilities described in this subparagraph (p) shall be hereinafter referred to as the "Related Facilities." Until completion thereof, the Related Facilities shall constitute Project Facilities and shall be maintained, insured and operated by the Company as in the case of Project Facilities. Upon completion thereof, the Related Facilities shall no longer constitute Project Facilities and shall be operated, maintained and insured by the Issuer as in the case of other Airport properties of the Issuer or shall be operated, maintained and insured by the Company pursuant to the terms of separate lease agreements.

(End of Article II)

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT FACILITIES; ISSUANCE OF BONDS

Section 3.01. Agreement Regarding the Acquisition and Construction of the Project Facilities. (a) Subject to the provisions of Section 3.05 hereof, the Company will use its best efforts and proceed with reasonable speed and dispatch to cause the Acquisition and Construction of the Project Facilities substantially in accordance with the Plans and Specifications as prepared by the Company in reasonable detail and delivered to and approved by the Issuer, including any supplements, amendments, changes and additions thereto proposed by the Company and, with respect to all major structural changes to the Project Facilities, approved by the Issuer or requested by the Issuer in writing and approved by the Company, all of the foregoing to be in compliance with the rules, regulations and procedures of the Issuer and with all applicable building codes and all applicable federal, State or local laws, rules and regulations. No material supplements, amendments, changes or additions to the Plans and Specifications shall materially change the descriptions set forth in the exhibits hereto or change the function of any principal component described in the Plans and Specifications, unless there shall be filed with the Issuer and the Trustee the written approving opinion of Bond Counsel to the effect that such supplement, amendment, change or addition will not result in the inclusion of interest on any 1992 Series A or B Bond in the gross income of the holder thereof for federal income tax purposes (except, as to the 1992 Series A Bonds, in respect to "substantial users" and "related persons" as described in Section 147(a)(1) of the Code) and will not

adversely affect the qualification of the Project Facilities as a financeable project under the Act. In the event of such a change in the descriptions set forth in the exhibits hereto and following receipt by the Issuer and the Trustee of such opinion of Bond Counsel, the Issuer and the Company shall amend any or all of the exhibits to this Agreement to reflect such change.

(b) In no event shall any changes or revisions in Plans and Specifications (i) cause the Project Facilities, or any portion thereof, to be structurally unsound or unsafe or hazardous; (ii) fail to provide for sufficient clearance for taxiways and aprons, if applicable; (iii) provide for use of the Project Facilities, or any portion thereof, for purposes other than those initially contemplated and agreed to by the Issuer, unless approved in writing by the Issuer; (iv) adversely affect the qualification of the Project Facilities as a financeable project under the Act or impair the exclusion of interest on any of the 1992 Series A or B Bonds from gross income for purposes of federal income taxation (except, as to the 1992 Series A Bonds, in respect to "substantial users" and "related persons" as described in Section 147(a)(1) of the Code); or (v) fail to comply with or be inconsistent with the terms and conditions of this Agreement. The Company shall not be deemed to be in default under the provisions of this Section 3.01 if the Acquisition and Construction of all or any portion of the Project Facilities shall be delayed or prevented by the Company's inability to secure needed labor or material, stormy or inclement weather, strikes, labor disputes, lockouts or like trouble, acts of God, acts of neglect of the Issuer or its agents or employees, laws, regulations or restrictions of or imposed by any governmental entity, agency or board, orders of any court, or fire

or other similar catastrophe or any other cause that is beyond the Company's reasonable control; provided, however, that if any of such events occur in connection with the Acquisition and Construction of all or any portion of the Project Facilities, the Company shall in good faith use its best efforts to remedy the cause or causes preventing it from carrying out such Acquisition and Construction if practicable, at reasonable cost (in the Company's judgment) and subject to the remaining terms hereof; and provided further that settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the Company.

(c) All Issuer approvals required by this Section 3.01 shall be solely for the purpose of assuring compatibility of the Project Facilities with existing Airport facilities and with the continuous operation of the Airport. Such Issuer approvals shall not be unreasonably withheld. The Issuer's approval rights under this Section 3.01 are Unassigned Rights, which are not assigned to the Trustee, and the Trustee shall not have any right pursuant to this Agreement or the Indenture to approve any supplements, amendments, changes and additions to or deletions from the Plans and Specifications or the Project Facilities.

(d) The Plans and Specifications, including any supplements, amendments and additions thereto and as-built Plans and Specifications, in form as stipulated by the Issuer, shall be filed by the Company with the Issuer.

Section 3.02. Agreement to Issue 1992 Series A and B Bonds. (a) In order to provide funds for payment of the Costs of Construction of the Project Facilities, the Issuer agrees to use its best efforts to issue the 1992 Series A Bonds in an aggregate principal amount not

to exceed $419,000,000 and to issue the 1992 Series B Bonds in an aggregate principal amount not to exceed $19,000,000. The Company may request the Issuer to issue Additional Bonds pursuant to Sections 2.10 or 2.11 of the Indenture to (1) finance the cost of completing any portion of the Project Facilities, (2) refund any of the 1992 Series A or B Bonds or Additional Bonds, including the costs of issuance and sale of such 1992 Series A or B Bonds or (3) finance the Acquisition and Construction of additions, expansions and improvements to the Project Facilities or additional facilities at the Airport for use by the Company. If the Company is not in default hereunder the Issuer, upon request of the Company pursuant to the preceding sentence to issue such Additional Bonds, will use its best efforts to issue such Additional Bonds if it is legally permitted to do so. Additional Bonds shall be issued upon such terms and conditions as may be agreed upon by the Issuer and the Company in accordance with the provisions of Sections 2.10 and 2.11 of the Indenture. The Issuer and the Company hereby agree that, to the extent permitted by law, any statutory mortgage lien provided for by KRS 103.250(1) or KRS 103.250(2) is expressly waived and released and shall not be applicable to the Project Facilities or constitute security for the payment of the 1992 Series A and B Bonds.

(b) It is understood and agreed that the principal amount, interest rate or rates, terms and other provisions of any Additional Bonds shall be subject to the written consent of the Company prior to the issuance of any such Additional Bonds and that the Issuer will not issue any such Additional Bonds without such approval. If, however, the Issuer is unable to issue any such Additional Bonds as aforesaid after a request of the Company under this Section 3.02, then

the Company shall, upon demand, pay or reimburse the Issuer for all reasonable costs and expenses, if any, of the Issuer in attempting to issue any Additional Bonds. The Issuer shall not refund any 1992 Series A or B Bonds or change or modify any 1992 Series A or B Bonds in any way without prior written approval of the Company.

(c) The Company hereby approves the form of the Indenture and the terms, provisions and conditions thereof.

Section 3.03. Application of the. Proceeds of 1992 Series A and B Bonds. The proceeds of the 1992 Series A and B Bonds shall be deposited with the Trustee in the funds and accounts specified in the Indenture. The application of such proceeds shall be subject to the conditions set forth in the Indenture.

Section 3.04. Establishment of the Completion Date. The Completion Date of the Project Facilities financed by each of the 1992 Series A Bonds and the 1992 Series B Bonds shall be evidenced in each case to the Issuer and the Trustee by a certificate signed by the Authorized Company Representative to the effect that (i) the Acquisition and Construction has been completed substantially in accordance with the Plans and Specifications therefor and (ii) except for amounts to be retained by the Trustee for Costs of Construction not then due and payable (including, without limitation, such interest on the 1992 Series A or B Bonds payable after the applicable Completion Date as permitted by the Act and the Code) and except for Costs of Construction for which the Company has withheld payments or is contesting payment, all costs and expenses for labor, services, materials and supplies used in the Acquisition and Construction of the Project Facilities for which

payment is due, have been paid in full. Any amounts to be retained by the Trustee for payment of Costs of Construction not then due and payable shall be the subject of specific instructions and directions of the Company to the Trustee. Notwithstanding the foregoing, each certificate of completion shall state that it is given without prejudice to any rights of the Issuer or the Company, as the case may be, against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 3.05. Company Required to Pay Costs of Construction in Event Proceeds of 1992 Series A or B Bonds Insufficient. (a) In the event that moneys held in the Construction Fund available for payment of the Costs of Construction of the Project Facilities are not sufficient to pay such Costs of Construction in full, the Company either (i) shall request the Issuer to issue Additional Bonds pursuant to Section 3.02 hereof to pay any or all of such excess Costs of Construction, or (ii) shall complete and pay all Costs of Construction of such Project Facilities in accordance with the Plans and Specifications, as such Plans and Specifications may be modified with the approval of the Issuer, which approval shall not be unreasonably withheld, at the Company's expense; provided that in the event the Company requests the Issuer to issue Additional Bonds and the Issuer is unable to do so, the Company shall comply with clause (ii) of this sentence.

(b) The Issuer does not make any warranty, either express or implied, that the moneys paid into the Construction Fund and available for payment of the Costs of Construction of the Project Facilities will be sufficient for such purpose. The Company agrees that if after exhaustion of such moneys the Company

should pay any portion of the Costs of Construction of the Project Facilities pursuant to the provisions of this Section 3.05, it shall not be entitled to any reimbursement therefor from the Issuer (except from the proceeds of any Additional Bonds or pursuant to separate agreement) or from the holders of any 1992 Series A or B Bonds, nor shall the Company be entitled to any diminution of the rents payable under Article IV hereof.

Section 3.06. Company to Pursue Remedies Against Contractors, Subcontractors and Suppliers and Their Sureties. In the event of default of any contractor, subcontractor or supplier under any contract made in connection with the Project Facilities, the Company will, if in its discretion it deems it appropriate, promptly proceed, either separately or in conjunction with the Issuer, if the Issuer consents (which consent shall not be unreasonably withheld) or with others, to pursue the remedies of the Company against the contractor, subcontractor or supplier so in default and against any surety for the performance of such contractor, subcontractor or supplier. The Company agrees to advise the Issuer and the Trustee of any default by a contractor, subcontractor or supplier material to the operations of the Airport and any legal actions or proceedings it intends to commence in connection with any such default. Any amount recovered by way of damages, refunds, adjustment or otherwise in connection with the foregoing shall, after reimbursement to the Issuer and the Company of any cost incurred by them by reason of such default and legal and other related costs expended in prosecuting all claims against such defaulting party, (i) prior to the Completion Date shall be used to pay Costs of Construction of the Project Facilities and (ii) after the Completion Date

shall be paid to the Trustee for deposit into the Bond Fund and applied, at the direction of the Authorized Company Representative, (A) to purchase 1992 Series A Bonds or 1991 Series B Bonds, as applicable, in the open market (excluding any portion of the purchase price which is attributable to interest accrued and/or accruing on such 1992 Series A or B Bonds until the date of purchase) for the purpose of cancellation; (B) to redeem 1992 Series A or B Bonds, as applicable (paying principal sums only) for the purpose of cancellation; or (C) used to pay the principal of and/or interest on the 1992 Series A or B Bonds, as applicable Provided that prior to exercising the rights set out in clause (C) above the Company shall deliver to the Trustee and the Issuer an opinion of Tax Counsel to the effect that such transfer will not impair the exclusion of the interest on the 1992 Series A or B Bonds from gross income for federal income tax purposes. The Issuer shall be required to participate in any legal action or proceedings only to the extent the Issuer, its officers and employees are fully indemnified by the Company in connection therewith.

Section 3.07. Directions by Company to Trustee. In all cases where action may be taken under the Indenture by the Issuer at or upon the direction of the Company, the Issuer hereby authorizes the Company to give notice on behalf of the Issuer of the exercise of such action. Such notice shall be given concurrently to both the Issuer and the Trustee and may be given in writing or by telephone or telegraph, confirmed in writing.

Section 3.08. Title to the Protect Facilities. Subject to Section 3.09, all right, title and interest in the Project Facilities, including any portion thereof heretofore or hereafter acquired or constructed, whether

constituting real, personal or mixed property, shall vest and remain in the Issuer, subject to the leasehold estate of the Company created by this Agreement in respect of Project Facilities. The Company hereby conveys and transfers to the Issuer all of its present and future right, title and interest in and to the Project Facilities now or hereafter constructed or acquired other than the long-term leasehold estate hereby created. The Company hereby agrees to execute any further deed, conveyance, bill of sale or other written instrument as shall be necessary to convey any interest the Company may have in the Project Facilities to the Issuer, subject to the long-term leasehold estate of the Company created by this Agreement. It is intended that nothing in this Section 3.08 shall cause any Company property installed in or on the Project Facilities pursuant to Article V to become part of the Project Facilities or cause any "Excluded Equipment" under Article V to become part of the Project Facilities.

Section 3.09. Failure to Issue 1992 Series A and B Bonds,. If for any reason the 1992 Series A and B Bonds are not issued on or before December 31, 1992, this Agreement shall, at the Company's option, terminate and the Project Facilities shall at that time constitute leasehold improvements owned by the Company and in all respects be subject to the terms and conditions of any ground lease or similar undertaking entered into between the Issuer and the Company. In that event, notwithstanding any other provision in this Agreement to the contrary, there shall be no rental applicable to such facilities for the original Agreement term and any additional option term. Furthermore, the Issuer agrees to do whatever the Company may reasonably request to carry out the intent of this provision, including, without limitation,

amending any such ground lease or similar undertaking entered into between the Issuer and the Company and conveying all present and future right, title and interest of the Issuer in such facilities as now or hereafter constructed, to the Company and executing any further deed, conveyance, bill of sale or other written instrument as shall be necessary or desireable to convey any interest it has in such facilities to the Company. If the preceding events described in this Section 3.09 occur, upon expiration of the Agreement term, including any option period, the Company shall sell and transfer title to said facilities to the Issuer for One Dollar ($1.00).

(End of Article III)

ARTICLE IV.

LEASE OF THE PROJECT FACILITIES; OPTIONS TO RENEW; EFFECTIVE DATE OF THIS AGREEMENT: DURATION OF AGREEMENT TERM: RENTAL PROVISIONS; PREPAYMENTS AND CREDITS

Section 4.01. Demise of Project Facilities. The Issuer does, by these presents, hereby lease and demise to the Company, and the Company does, by these presents, hereby take and hire from the Issuer, for and during the term provided in Section 4.02 and upon and subject to the terms, provisions and conditions herein set forth, the Project Facilities. It is the intention of the Issuer and the Company that for federal income tax purposes the tax ownership of the Project Facilities shall at all times be in the Issuer, subject to Section 3.09 hereof.

Section 4.02. Effective Date of This Agreement; Duration of Agreement Term; Options to Renew. (a) This Agreement shall become effective upon the deli-

very hereof, and the leasehold estate created in this Agreement shall then begin, and shall continue in full force and effect, subject to Section 2.03(p) hereof, unless terminated prior thereto as hereinafter provided, for an initial term expiring December 31, 2015.

(b) Upon expiration of the initial Agreement term, the Company is hereby granted the options, exercisable in the case of each such option not more than 8 months nor less than 1 month prior to the expiration of either the initial Agreement term or the applicable option term, to renew this Agreement in respect of the Project Facilities for three additional terms ending respectively on (i) December 31, 2020, (ii) December 31, 2025 and (iii) December 31, 2025 (in the event, upon recalculation of the reasonably expected useful lives of the Project Facilities, upon completion of Acquisition and Construction, the 80% Test, as set forth in Section 4.02(d) hereof is not fully achieved in respect of the Second Option Term), in each case at rentals stipulated in clause (c) of this Section 4.02 (the (i) "Initial Option Term", the (ii) "Second Option Term" and the (iii) "Fair Rental Value Term"), respectively. The Company warrants, represents and covenants to the Issuer that (x) the initial Agreement term plus (y) the Initial Option Term plus (z) the Second Option Term do not, in the aggregate, exceed 80% of the reasonably expected economic life of the Project Facilities.

(c) The rental payable for the Project Facilities during the Initial Option Term shall be $1.00 per annum plus payment of the amounts described in Sections 4.03(a), 4.03(b) and 4.03(c) hereof, if any. The rental payable for the Project Facilities during the Second Option Term shall be $1.00 per annum plus payment of the amounts described in Sections

4.03(a), 4.03(b) and 4.03(c) hereof, if any. The rental payable for the Project Facilities during the Fair Rental Value Term shall be the fair rental value of the Project Facilities during such term, determined in accordance with clause (e) of this Section 4.02.

(d) Upon completion of Construction and Acquisition of the Project Facilities, the Company shall recalculate the reasonably expected useful lives of the Project Facilities to be leased pursuant hereto based on final, definitive costs of the Project Facilities; and to the extent required to assure that the Project Facilities to be leased pursuant hereto are not leased for more than 80% of its useful life by the Company at rental rates other than fair market rent (the "80% Test"), the Second Option Term termination date and Fair Rental Value Term commencement date shall, if necessary, be adjusted to dates identified by the Company which comply with the 80% Test. The Company shall notify the Board in writing of any such rental period adjustments.

(e) For purposes of clause (c) of this Section 4.02, in determining the fair market rental value of the Project Facilities for purposes of any option term, the Issuer and the Company shall, not more than four (4) months nor less than three (3) months prior to the expiration of the term preceding the Fair Rental Value Term, each select an appraiser, which shall be knowledgeable, experienced and qualified in the evaluation of the fair market value of airport properties and leases, whose fees shall be paid, respectively, by the Issuer and the Company. Those two appraisers shall, within 5 days of their appointments, then select a third similarly qualified appraiser, whose fee shall be shared equally by the Issuer and the Company. Each of the three appraisers shall, within 15

days of appointment, independently appraise the fair market rental value of the Project Facilities for the relevant option period. For purposes of those appraisals, fair market rental value shall mean the rental value as of the expiration date of the Second Option Term preceding the Fair Rental Value Term payable in cash in monthly installments, that a bona fide willing lessee who is not in possession and a bona fide willing lessee who is under no compulsion to lease are willing to pay to lease the Project Facilities for the Fair Rental Value Term. The Company's option to lease under this subparagraph (f) shall be at the fair market rental value as determined by the average of such three appraisals. The Issuer agrees to cooperate with the Company to ensure that the appraisals and rental rates determined thereby are made available to the Company at least fifteen (15) days in advance of the latest date on which the Company can exercise its option. If the Company exercises any option to renew granted by this Agreement, this Agreement shall continue in full force and effect for said option term.

Section 4.03. Rentals Payable. Throughout the Agreement term, the Company shall pay or cause to be paid to the Issuer each of the following rentals at the following times and in the following amounts:

(a) With respect to any Outstanding 1992 Series A and 1992 Series B Bonds, (i) on each maturity, redemption or principal payment date, an amount equal to the principal of and redemption premium, if any, due on such 1992 Series A and B Bonds (whether such payment date be by reason of maturity or upon redemption, prepayment or by acceleration or otherwise) on such maturity, redemption or principal payment date and (ii) on each Interest Payment

Date, an amount equal to the interest due on such 1992 Series A and B Bonds-on such Interest Payment Date; provided, however, the Company shall receive a credit against any rental amount due under this Section 4.03(a) and such obligation shall be deemed satisfied in the amount of any sum required to be paid under this Section 4.03(a) which is paid from any amounts on hand available for such purposes under the Trust Indenture, including any amounts paid pursuant to the Guaranty.

(b) A rental commencing upon delivery of this Agreement payable from time to time within thirty (30) days after receipt by the Company of a requisition therefor from the Issuer, until the principal of and premium, if any, and interest on all 1992 Series A and B Bonds shall have been fully paid or provision for the payment thereof shall have been made, in an amount equal to previously unreimbursed Administration Expenses, which may be payable to the Issuer or to third parties, at the request of the Issuer.

(c) So long as the 1992 Series A and B Bonds are outstanding, a rental payable at such times and in such amounts, together with moneys available therefor under the Indenture, so as to ensure compliance with the provisions of Section 148 of the Code, and the regulations promulgated thereunder, including particularly Treas. Reg. §1.103-15AT, Treas. Reg. §1,148-OT through 1.148-9T or any successor regulations.

Section 4.04. Assignment of Rights; Payees of Rental Payments. As security for the payment of the 1992 Series A and B Bonds, the Issuer will assign to the Trustee the Issuer's rights under this Agreement, including the rights to receive payments hereunder, and Reserved Rights but exclusive of Unassigned

Rights and the Company herewith assents to such assignment. The rent provided for in Section 4.03(a) (i) and (ii) hereof shall be paid directly to the Trustee and shall be used by the Trustee to pay principal of and premium, if any, and interest on the 1992 Series A and B Bonds. The rent provided for in Section 4.03(c) shall be paid directly to the Trustee for payment to the U.S. Government. The rent provided for in Section 4.03(b) shall be paid either to the Issuer or directly to third parties, at the direction and request of the Issuer. All rights and remedies of the Issuer under any ground lease or similar undertaking are reserved to the Issuer and shall not be assigned to the Trustee.

Section 4.05. Obligations of the Company Hereunder Absolute and Unconditional. The obligations of the Company to make the payments required under Section 4.03(a) and (c) and to pay the premiums or charges necessary to maintain or cause to be maintained the insurance required by Section 5.06 not otherwise paid in accordance with other provisions of this Agreement shall be absolute and unconditional and the Company will not suspend or discontinue any such payments referred to in Section 4.03(a) and 4.03(c) so long as any 1992 Series A or B Bonds are Outstanding and will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, (A) any abatement, suspension, deferment, reduction, setoff, defense (other than payment), counterclaim or recoupment whatsoever, or any right to any thereof, which the Company may now or hereafter have, (B) any insolvency, composition, bankruptcy, reorganization, arrangement, liquidation or similar proceedings relating to the Issuer or the Company, (C) any delay or failure of the Project Facilities, or any portion thereof, to be completed,

operating or operable, or any defect in the title, quality, condition, design, operation or fitness for use of, or any damage to, or loss of, or loss of use of, or destruction or theft of, all or any part of the Project Facilities from any cause whatsoever, (D) any interruption or prohibition of the use or possession by the Issuer or the Company of, or any ouster or dispossesion by paramount title or otherwise of the Issuer or the Company from, all or any part of the Project Facilities, or any interference with such use or possession by any governmental agency or board or other person or otherwise, (E) the invalidity or unenforceability or disaffirmance, in whole or in part, of this Agreement or any ground lease referenced in Section 2.03(o) hereof or any failure, omission, delay or inability of the Issuer to perform any of its obligations contained in this Agreement, (F) any amendment, extension or other change of, or any assignment or encumbrance of any rights or obligations under, this Agreement, or any waiver or other action or inaction, or any exercise or non-exercise of any right or remedy, under or in respect of this Agreement, (G) any sale, release, substitution, exchange or other action or inaction with respect to the Project Facilities, (H) any acts or circumstances that may constitute failure of consideration, (I) any change in the tax or other laws of the United States of America or of the Commonwealth or any political subdivision of either thereof, (J) any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connection with this Agreement, or (K) any other circumstance, happening or event whatsoever, whether foreseeable or unforeseeable and to the extent permitted by applicable law, any and all rights which it may now have or

which may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender any of its obligations under this Agreement in regard to payments referred to in Section 4.03 and agrees that if, for any reason whatsoever, this Agreement shall be terminated in whole or in part by operation of law or otherwise, the Company will nonetheless promptly pay to the Trustee as assignee of the Issuer amounts equal to all such amounts referred to in Section 4.03(a) and (c) which shall become due and payable pursuant to this Agreement, to the same extent as if this Agreement had not been terminated in whole or in part. Each payment referred to in Section 4.03(a) and (c) made by the Company pursuant to this Agreement, including such other amounts, shall be final and the Company shall not seek to recover all or any part of such payment from the Issuer, the Trustee or any holder of 1992 Series A and B Bonds for any reason whatsoever. Nothing contained in this Section 4.05 shall be construed to relieve the Issuer or the Trustee from the performance of any of the agreements on their part contained herein or in the Indenture or to constitute a waiver by the Company of its rights to enforce the performance thereof. Nothing in this Agreement shall prevent the Company from exercising any right it may have to terminate any ground lease or other agreement referred to in Section 2.03(o) hereof, even if such termination results in a termination of this Agreement as to some or all of the Project Facilities.

Section 4.06. Prepayment of Rents. (a) There is expressly reserved to the Company the right, and the Company is authorized, at any time it may choose, to prepay or cause to be prepaid all or any part of the rents payable under Section 4.03 hereof to provide for

the redemption of 1992 Series A and B Bonds in whole or in part or to provide for the defeasance of 1992 Series A and B Bonds pursuant to the Indenture, and the Issuer agrees that the Trustee shall accept such prepayment of rents when the same are tendered by the Company. All rents so prepaid (including interest accrued thereon) shall be deposited in accordance with the Indenture and credited against the rental payments specified in Section 4.03 in the order of their due dates.

(b) At the time of the issuance of the 1992 Series A and B Bonds, the Company shall file a certificate with the Issuer and the Trustee allocating the proceeds of the 1992 Series A and B Bonds to the several airport facilities comprising the Project Facilities, on the basis of the amount of the proceeds of the 1992 Series A and B Bonds expected to be expended for each such airport facility. Upon completion of construction and acquisition of the Project Facilities, the Company, based on final, definitive costs of the Project Facilities shall file a supplemental certificate with the Trustee to the extent required to accurately allocate the proceeds of the 1992 Series A and B Bonds to the Project Facilities. Following completion of the Project Facilities, at any time, the Company may, as 1992 Series A Bonds are discharged, whether by scheduled payment and maturity, acceleration or redemption, by certificate filed with the Trustee, elect that any component of the Project Facilities as to which allocated 1992 Series A Bond proceeds have been paid and discharged, shall no longer be subject to this Agreement, whereupon the leasehold estate of the Company in respect of such element of the Project Facilities shall terminate, cease and determine and the ground lease applicable to such element of the Project Facilities shall auto-

matically terminate, cease and determine provided, however, that no such election may be made by the Company in respect of any of the Project Facilities prior to December 31, 2015. The Issuer covenants that any such element of the Project Facilities so released from this Agreement shall only be used as airport facilities, as defined in Section 142(a)(1) of the Code, and Treasury Regulations thereunder.

(End of Article IV)

ARTICLE V.

MAINTENANCE, TAXES AND INSURANCE

Section 5.01. Maintenance of Project Facilities by the Company. (a) During the term of this Agreement, the operation, maintenance and repair of the Project Facilities shall be the obligation and responsibility of the Company. The Company shall pay, as the same shall become due, all costs and expenses incurred by it in the operation, maintenance and repair of the Project Facilities, including any machinery, equipment or related property substituted for any equipment therein. The Company agrees that during the term of this Agreement it will at its own expense maintain or cause to be maintained, and will keep or cause to be kept, the Project Facilities in good condition (ordinary wear and tear excepted) and in as reasonably safe condition as its operations permit.

(b) The Company shall at all times keep or cause to be kept the Project Facilities, together with all property of the Company located in or on the Project Facilities, in a clean and orderly condition and appearance.

Section 5.02. Utility Services. (a) The Issuer shall, at the expense of the Company, bring or cause to be

brought and maintained such utility facilities and connections for the supply of water, gas, electricity, telephone and other utilities, and for the disposal of sewage and industrial waste, as the Company shall require up to such point or points on the boundary or boundaries of the Project Facilities as the parties shall mutually determine.

(b) Except as provided in subsection (a) of this Section 5.02, the obtaining and maintaining of all utility services with respect to the Project Facilities shall be the responsibility of the Company. The Company shall pay all lawful charges for utility services furnished to the Company as the same become due both during and after Acquisition and Construction of the Project Facilities.

(c) So long as any 1992 Series A or B Bonds are Outstanding, no failure, delay or interruption in any utility service or services, whether such are supplied by the Issuer or others, shall relieve or be construed to relieve the Company of any of its obligations hereunder, or shall be or construed to be an eviction of the Company, or shall constitute grounds for diminution or abatement of the rentals payable pursuant to this Agreement, except as provided in Section 8.02 hereof, the provisions of which are incorporated herein by reference.

Section 5.03. Installation of the Company's Property. (a) The Company shall have the right (i) to make structural improvements, alterations or modifications not inconsistent with the Plans and Specifications to the Project Facilities which shall become part thereof and be the property of the Issuer, and (ii) to install its own furnishings, equipment, machinery or other personal property in or on the Project Facilities or to attach fixtures or structures in or on the Project

Facilties which, if same can be removed without damage to or alteration of the Project Facilities, shall not become a part of such Project Facilities. From time to time, including upon the termination of the term of this Agreement by lapse of time or otherwise (including without limitation, upon exercise by the Issuer of the remedies reserved to it in Article VIII, Section 8.07), the Company may remove from the Project Facilities, at its own expense, any of its furnishings, equipment, machinery or other personal property, fixtures or structures added by it which do not constitute part of the Project Facilities; provided, however, that such removal shall be accomplished so as to leave the Project Facilities, except for ordinary wear and tear, in substantially the same condition as they were before the Company's furnishings, equipment, machinery or other personal property, fixtures or structures were added by it to the Project Facilities, and that any damage occasioned by such removal shall be repaired by the Company at its own expense. The Company shall, before or within a reasonable time after the termination of the term of this Agreement by lapse of time or otherwise (including, without limitation, upon the exercise by the Issuer of the remedies reserved to it in Article VIII, Section 8.07), remove its furnishings, equipment, machinery, or other personal property, apparatus, fixtures and structures, installed pursuant to this Section 5.03 from the Project Facilities. All furnishings, equipment, machinery or other personal property, fixtures or structures installed by the Company pursuant to clause (ii) of the first sentence of this Section 5.03(a) shall remain the property of the Company in which the Issuer shall have no interest.

(b) Without limiting the generality of the foregoing provisions of this Section 5.03, the Company

shall have the right to install and operate in or upon the Project Facilities advertising signs representing its business, subject to the provisions of the Ground Lease.

Section 5.04. Changes to the Project Facilities After the Completion Thereof. (a) The Company may remove any item of equipment or any other part of the Project Facilities which in the opinion of the Company has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary. The Company shall be under no obligation to replace removed items or parts with other items or parts unless and to the extent such replacement is required in order to avoid a material adverse effect on the overall operating efficiency of the Project Facilities remaining after such removal. Any replacement items and parts required to be so replaced (hereinafter referred to as the "Replacement Property"), other than any item or part of the Company's own furnishings, equipment, machinery, other personal property, fixtures, structures in or on the Project Facilities furnished by the Company pursuant to clause (ii) of the first sentence of Section 5.03(a)(ii) which are not part of the Project Facilities (hereinafter referred to as "Excluded Equipment"), shall be and become a part of the Project Facilities and shall be subject to this Agreement. Nothing in this paragraph shall be a limitation upon or be construed as a limitation upon, the obligations of the Company set forth in Section 5.01.

(b) The Company may, with the consent of the Issuer, on behalf of the Issuer in the case of any part of the Project Facilities other than Excluded Equipment, sell, trade in, exchange or otherwise dispose of (as a whole or in part) any property removed from the Project Facilities pursuant to subsection (a) of this

Section 5.04. The Company shall have no responsibility of accountablity for such property or for the proceeds of the disposition thereof (except as specifically set forth in subsection (a) and (d) of this Section 5.04) to the Issuer or the Trustee.

(c) The Company will promptly report to the Issuer and the Trustee each removal, substitution, installation, sale and other disposition made pursuant to this Section 5.04, other than Excluded Equipment; provided, that no such report need be made, and no such payment need be made, as the case may be, until the amount so to be reported, or so to be paid, as the case may be, not previously reported, or not previously paid, as the case may be, aggregates at least $100,000.

(d) The removal from the Project Facilities of any part of the Project Facilities pursuant to the provisions of this Section 5.04, or the installation by the Company of any new or additional property thereon pursuant to the provisions of this Section 5.04 shall not entitle the Company to any abatement or diminuation of the rentals payable hereunder. The Company shall not remove or permit the removal of any other machinery, apparatus, furnishings, equipment or other personal property constituting part of the Project Facilities except in accordance with the provisions of Sections 5.03 and 5.04. In the event that the removal of the property causes damage to any remaining buildings or structures, the Company shall promptly restore and repair the same at its own expense.

Section 5.05. Taxes, Other Governmental Charges and Utility Charges. (a) The Company will pay during the term of this Agreement, as the same respectively become due, all taxes and governmental

charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Facilities or any machinery, equipment or other property installed, brought by the Company therein or thereon or with respect to the issuing of 1992 Series A or B Bonds (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the rentals of the Issuer derived under this Agreement, or any transaction privilege taxes or rental taxes payable as a result of any rental payments hereunder and similar charges, pursuant to this Agreement) and all assessments and charges lawfully made by any governmental body for public improvements; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated to pay only such installments as are required to be paid during the term of this Agreement. Upon receipt of notice thereof by the Issuer, the Issuer will promptly provide notice to the Company as to the levy or assessment of any such taxes or governmental charges, but the failure of the Issuer to provide such notice will not affect the responsibilities of the Company as set forth in this subsection (a) once such notice is provided to the Company.

(b) The Company may, at its expense and in its own name and behalf or in the name and on behalf of the Issuer, but only after written notice to the Issuer, in good faith contest any assessed valuation or the amount or the legality of such taxes, assessments and other charges, and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the enforcement of any such contested items is so stayed

and such stay thereafter expires or unless by non-payment of any such contested items, any part of the Project Facilities will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly or secured by posting a bond, in form satisfactory to the Issuer, with the Issuer. The Issuer will cooperate fully with the Company in any such contest. The Issuer shall cooperate with the Company in connection with any administrative or judicial proceedings for determining the validity or amount of any such taxes, assessments or other charges or any payments in lieu of taxes and appoints the Company to take any action which the Issuer may lawfully take in respect of such payments and all matters relating thereto and the Company shall bear and pay all costs and expenses of the Issuer thereby incurred at the request of the Company or by reason of any such action taken by the Company on behalf of the Issuer.

Section 5.06. Insurance Required. There shall be maintained reasonably adequate insurance against risks, accidents or casualties, including self-insurance, with respect to the Project Facilities as is customarily carried by persons engaged in the same business and operating facilities like the Project Facilities. Such insurance coverage shall be in accordance with the provisions of the applicable Ground Lease.

(End of Article V)

ARTICLE VI.

SPECIAL COVENANTS

Section 6.01. Maintenance of Existence. (a) The Company agrees that so long as any 1992 Series A or 13 Bond remains Outstanding, it will maintain its corporate existence, will not dissolve or otherwise

dispose of all or substantially all of its assets and licenses and will not merge into or consolidate with any other corporation or other entity; provided, however, that the Company may, without violating any provision hereof, consolidate with or merge into another corporation or other entity or permit one or more other corporations or other entities to consolidate with or merge into it, or transfer or convey all or substantially all of its property, assets or licenses to another corporation or other entity, but only on the condition that the corporation or other entity resulting from or surviving such merger (if other than the Company) or consolidation or the corporation or other entity to which such transfer or conveyance is made shall (a) expressly assume in writing and agree to perform all of the Company's obligations hereunder, (b) be qualified to do business in the Commonwealth, and (c) if such corporation or other entity shall not be organized and existing under the laws of the United States of America or any state or territory thereof or the District of Columbia, deliver to the Issuer and the Trustee an irrevocable consent to service of process in, and to the jurisdiction of the courts of, the Commonwealth with respect to any action or suit, in law or in equity, brought by the Issuer or the Trustee to enforce this Agreement. If the Company is the surviving corporation in such a merger, the express assumption referred to in the preceding sentence shall not be required.

(b) The Company shall preserve and keep in full force and effect all material licenses and permits necessary to the proper conduct of its business and necessary to its use and beneficial occupancy of the Project Facilities.

Section 6.02. Financial Information. The Company agrees to furnish to the Issuer and the Trustee a copy of its annual report and Form 10-K setting forth its financial statements and the report of the independent public accountants with respect thereto. Such annual report shall be furnished to the Issuer and the Trustee not later than 30 days after the Company files such report with the Securities and Exchange Commission. The Company also agrees to furnish the Issuer and the Trustee a copy of each of its quarterly reports on Form 10-Q not later than 30 days after it files such reports with the Securities and Exchange Commission. Upon request of the Issuer or the Trustee, the Company will furnish copies of any other public financial statements and reports filed by the Company with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

Section 6.03. Right of Access to the Project Facilities. (a) The Company, its directors, officers, employees, customers, agents, representatives, guests, contractors, suppliers of materials, furnishers of services and invitees, shall have the right of ingress to and egress from: (i) the Project Facilities, provided, however, that such right of ingress and egress shall be subject to the reasonable rules, regulations and requirements of general applicability of the Issuer and the Company as the same may be in effect from time to time; and (ii) such other portions of the Airport to or from which said persons reasonably require ingress and egress, provided, however, that such right of ingress and egress shall be subject to the reasonable rules, regulations and requirements of general applicability of the Issuer as the same may be in effect from time to time.

(b) The Issuer shall at all times furnish the Company means of access suitable to the nature of the Company's business and operation from the Project Facilities to the public streets and thoroughfares and to the Airport roadways, transportation facilities, ramps, taxiways and runways. Such access road, or roads, transportation facilities, taxiways and similar facilities need not be the same throughout the term of this Agreement so long as the Company is at all times provided with suitable access roads, transportation facilities and taxiways. Ramps leased or assigned to the Company shall not be changed without the Company's consent.

(c) The Issuer may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway, taxiway or runway and any other area at the Airport (other than ramps) presently or hereafter used as such, so long as a reasonable alternative means of ingress and egress remains available to the Company, its employees, customers, guests, contractors, suppliers of materials, furnishers of services and invitees.

(d) The Issuer or its designee shall have during the term of this Agreement the right of entry upon the Project Facilities: (i) to examine and inspect the same, (ii) for any purpose connected with the Issuer's rights or obligations or the Company's obligations under this Agreement, (iii) to service or post or keep posted thereon notices provided by any law or rules or regulations of the Commonwealth which the Issuer deems to be necessary for the protection of the Issuer or the Project Facilities; and (iv) for all other lawful purposes; provided that in exercising the right of entry pursuant hereto the Issuer shall not unreason-

ably interfere with the Company's use or occupancy of the Project Facilities.

(e) Without limiting the generality of the foregoing, the Issuer, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right for its own benefit, for the benefit of the Company or for the benefit of parties other than the Company at the Airport, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Project Facilities at all reasonable times to make such repairs, replacements or alterations to such systems as may, in the opinion of the Issuer, be necessary or desirable and, from time to time, to construct or install such systems over, in or under the Project Facilities for access to other parts of the Airport not otherwise conveniently accessible, provided that the maintenance, construction and installation of such systems does not interfere with the operation by the Company of the Project Facilities.

(f) Nothing in this Section 6.03 shall, or shall be construed to, impose upon the Issuer any obligations so to maintain, construct or install such systems or to make repairs, replacements, alterations or additions to the Project Facilities, or shall create any liability for any failure to do so provided that nothing herein shall be construed to reduce or abrogate any of the obligations of the Issuer arising under Section 5.02(a) hereof.

Section 6.04. Company's Performance Under Indenture; Amendments to Indenture. The Company agrees, for the benefit of the Owners from time to time of the 1992 Series A and B Bonds, to do and perform all acts and things contemplated in the Indenture to be done or performed by it. The Issuer agrees

that it shall not execute or permit any amendment or supplement to the Indenture which affects any rights, obligations, powers or authorities of the Company under the Indenture or this Agreement or which requires a revision of this Agreement without the prior written consent of the Company.

Section 6.05. Qualification in the Commonwealth. The Company agrees (except as may be otherwise permitted pursuant to the provisions of Section 6.01) that throughout the term of this Agreement, it will continue to be a corporation either organized under the laws of the Commonwealth or duly qualified to do business in the Commonwealth as a foreign corporation.

Section 6.06. Compliance with Applicable Laws. The Company will comply with all laws, ordinances, orders, rules and regulations of all federal, state and municipal governments and the appropriate departments, commissions, boards and offices thereof, including the Issuer, having jurisdiction over the Airport and the Project Facilities, legally applicable to the Company's construction, acquisition, installation, use and operation of the Project Facilities ("Applicable Laws"), including any reasonable rules and regulations of general applicability of the Issuer; provided that the Issuer agrees that all Applicable Laws so promulgated by the Issuer shall not be inconsistent with the terms of or rights granted under this Agreement or any Applicable Laws of the Federal Aviation Administration which are binding on the Company, as the same now are or may from time to time be amended or supplemented. Without limiting the generality of the foregoing, the Company shall construct, acquire and install and at all times thereafter (subject to the provisions of this Agreement) use and occupy the Project Facilities in strict

accordance with any and all Applicable Laws that may be imposed by the Federal Aviation Administration which are binding on the Company with respect to the Project Facilities or the operations thereof or the Airport and the operations thereof. The Company shall not be in breach of this covenant or any other covenant in this Agreement so long as it attempts to comply in good faith with such Applicable Laws in reliance upon any or all of judicial precedents or other precedents (including but not limited to relevant legal opinions given to it or the Issuer); provided that, in the event such judicial or other precedents, if any, are, as a result of change of law, adverse judicial or administrative decision or other similar occurrence, rendered unreliable, the Company shall, subject to all rights of contest and appeal as hereinafter set forth, and subject to Section 6.08, thereafter comply with such Applicable Laws and pay any amounts due as a result of the applicability thereof to the persons to whom any such amounts may be due. The Company may, in good faith and with due diligence contest any Applicable Laws and their application, and in the event of such contest, may, without breach of this covenant, continue any then-existing noncompliance with any such Applicable Laws during the period of the contest and any appeal therefrom unless and until it is judicially determined that such non-compliance will subject the Project Facilities or any part thereof to loss or forfeiture, in which event the Company shall, upon such termination, thereafter promptly comply with such Applicable Laws in issue pending a final outcome on such contest and the exhaustion of or the failure to timely pursue the Company's appeal rights.

Section 6.07. Illegal Acts. The Company shall not use the Project Facilities or any parts thereof or per-

mit within its knowledge the same to be used by any of its subleasees, concessionaires, tenants, officers, agents or employees for any illegal purposes.

Section 6.08. Indemnification of Issuer and Trustee. (a) The Company will pay, and will protect, indemnify and save the Issuer and the Trustee (including all officers and employees of the Issuer and the Trustee) harmless from and against any and all fines, penalties, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses of the Company, the Issuer and the Trustee), causes of action, suits, claims, demands and judgments of whatsoever kind and nature (including, but not by way of limitation, those arising or resulting from any injury to or death of any person or damage to property), except that the Company shall not be required to indemnify any party for such party's own negligence or wilful misconduct or the negligence or wilful misconduct of such party's officers, employees or agents, arising out of the following: (i) the design, Acquisition and Construction by the Company of the Project Facilities; (ii) the use, operation or occupancy by the Company of the Project Facilities; (iii) violation by the Company of any agreement, warranty, covenant or condition of this Agreement; (iv) violation by the Company of any other contract, agreement or restriction relating to the Project Facilities; or (v) violation by the Company of any Applicable Laws affecting the Project Facilities.

(b) Subject to the provisions of Section 10.01 of this Agreement, the Issuer or the Trustee, as the case may be, shall promptly notify the Company in writing of any claim or action brought against the Issuer or the Trustee, as the case may be, in respect of which indemnity may be sought against the Com-

pany, setting forth the particulars of such claim or action, and the Company will assume the defense thereof, including the employment of counsel, and the payment of all expenses. The Issuer or Trustee, as the case may be, may employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall not be payable by the Company unless such employment has been specifically authorized by the Company. The Company shall not be liable for any settlements of any action effected without its consent.

(c) The obligation of the Company under this Section 6.08 shall survive the termination of this Agreement.

Section 6.09. Issuer's Expenses; Release and Indemnification Provisions. The Company agrees, in the event this Agreement and the Indenture shall not be consummated to indemnify, and save the Issuer harmless against liability for the payment of all Administration Expenses arising in connection with said contemplated transactions.

Section 6.10. Compensation and Other Indemnification Provisions. The Company will pay to the Trustee, the Paying Agent and the Registrar reasonable compensation for their services rendered under the Indenture and any Tender Agreement and the Remarketing Agreement, pursuant to the provisions thereof.

Section 6.11. Discharge of Liens. (a) The Company shall pay or cause to be satisfied and discharged or make adequate provision to satisfy and discharge, within 60 days after the same shall accrue, any lien or charge upon the payments under Article IV, and all lawful claims or demands for labor, materials,

supplies or other charges which, if unpaid might be or become a lien thereon; provided, that, if the Company shall first notify the Trustee of its intention so to do, the Company may in good faith contest any such lien or charge or claims or demands in appropriate legal proceedings, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Trustee shall notify the Company in writing that, in the opinion of Counsel acceptable to the Trustee, by nonpayment of any such item the lien of the Indenture as to the Trust Estate shall be materially endangered, in which event the Company shall promptly secure a bond for or pay and cause to be satisfied and discharged all such unpaid items. The Issuer and the Trustee shall cooperate fully with the Company in any such contest at the Company's sole cost and expense.

(b) The Company agrees to pay (to the extent moneys therefor are not then available from the proceeds of the Bonds) or cause to be paid when due, all sums of moneys that may lawfully become due for any labor, services, materials, supplies, utilities, furnishings, machinery or equipment alleged to have been furnished or to be furnished to, or for the Company in, upon or about the Project Facilities. The Company shall not permit a mechanic's lien for any labor or materials to attach to any of the Project Facilities and the Company herein agrees that, if a mechanic's lien is filed upon the Project Facilities or the leasehold, the Company shall protect and save harmless the Issuer against any loss, liability or expense whatsoever by reason thereof and shall proceed with or defend, at its own expense, such action or proceedings as may be necessary to remove such lien from the records. Upon receipt of notice thereof

by the Issuer, the Issuer will promptly provide notice to the Company as to the existence of any such mechanic's lien on the Project Facilities, but the failure of the Issuer to provide such notice will not affect the responsibilities of the Company as set forth in this subsection (b) other than its obligation to protect and save harmless the Issuer.

(c) The Company may, however, in good faith and with due diligence, contest any mechanics' or other liens filed or established against all or any portion of the Project Facilities or the leasehold, or contest any rule, law, regulation or other governmental requirement even though such contest may result in the imposition of a lien or charge against all or any portion of the Project Facilities or the leasehold, and in such event may permit the items so contested and such lien or charge to remain undischarged and unsatisfied during the period of such contest and appeal therefrom, (i) if the Company shall effectively prevent or stay the execution, foreclosure or enforcement of such lien or charge, and (ii) if and so long as such contest or appeal shall prevent or stay the execution or enforcement or foreclosure of such lien or charge; provided, however, that if such lien or charge is so stayed and such stay thereafter expires or the Company is notified by the Issuer that by nonpayment of any such items the Project Facilities or any part thereof will be subject to loss or forfeiture, then the Company shall forthwith pay and cause to be satisfied and discharged such lien or charge or comply with such governmental requirement or secure such payment by posting a bond, in form satisfactory to the Issuer, as the case may be. The Issuer will cooperate fully with the Company in any such contest.

Section 6.12. Redemption and Purchase of 1992 Series A and B Bonds. The Issuer, upon the request in writing at any time of the Company and if the same are then redeemable, shall forthwith take all steps that may be necessary under the provisions of the Indenture to effect redemption or purchase of all or a portion of the then Outstanding 1992 Series A and B Bonds, as may be specified by the Company, on the earliest date on which such redemption or purchase may be made under such applicable provisions. The Issuer shall not redeem, purchase or call for redemption any 1992 Series A or B Bonds subject to optional redemption except upon the direction of the Company.

Section 6.13. Assignment or Sublease. The Company shall not assign this Agreement or any part thereof, or sublet all or any portion of the Project Facilities, without the consent in writing of the Issuer (which consent shall not be unreasonably withheld), except as is otherwise provided herein. No consent of the Trustee or any other party shall be required. The consent of the Issuer shall not be required if the requirements of Section 6.01 hereof are satisfied. Additionally, the consent of the Issuer shall not be required as to any sublease if the following conditions are met:

(a) No sublease shall relieve the Company from liability for any of its obligations hereunder (without the Issuer's consent), and, so long as any 1992 Series A or B Bonds are Outstanding, in the event of any such sublease, the Company shall continue to remain liable for payment of the amounts referred to in Section 4.03 and for performance and observance of the other covenants, warranties, representations and agreements on its part herein provided to be per-

formed and observed to the same extent as though no sublease had been made;

(b) The sublessee shall assume in writing the obligations of the Company hereunder to the extent of the interest assigned; and

(c) The Company shall, at least thirty (30) days prior to any such sublease, provide the Issuer and the Trustee with written notice thereof and promptly, but in any event no later than thirty (30) days after any such event, furnish or cause to be furnished to the Issuer and to the Trustee a true and complete copy of such sublease.

Section 6.14. Quiet Enjoyment of the Project Facilities. The Issuer covenants and agrees that the Company by keeping and performing the covenants and agreements herein contained to be performed by it shall at all times during the term and any renewal term hereof have the right, subject to the provisions of this Agreement and to the rights of any tenants in possession, to peaceably and quietly possess and enjoy the Project Facilities without suit, trouble or hindrance from the Issuer. The Issuer at its expense shall defend the Company's right to such peaceful and quiet possession.

Section 6.15. No Liability of Issuer. The 1992 Series A and B Bonds shall be special and limited obligations of the Issuer payable solely and only out of the rental payments made pursuant to Section 4.03 hereof. No holder of any 1992 Series A or B Bond shall have the right to compel any exercise of the taxing power of the Commonwealth or any political subdivision thereof or the Issuer to pay principal of, premium, if any, or interest on or purchase price of the 1992 Series A and B Bonds, and the 1992 Series

A and B Bonds shall not constitute a general indebtedness of the Issuer, the Commonwealth or any political subdivision thereof or a loan of credit thereof within the meaning of any constitutional or statutory provision or limitation of indebtedness.

Section 6.16. Tax Covenants.

A. Notwithstanding any other provision hereof, the Company generally covenants and agrees that it will at all times do and perform all acts and things necessary or desirable and within its reasonable control in order to assure that interest paid on the 1992 Series A and B Bonds shall be excludable from the gross income of the recipients thereof for the purposes of federal income taxation, except, in the case of the 1992 Series A Bonds, in the event that such recipient is a "substantial user" of the Project Facilities or "related person" within the meaning of Section 147(a)(1) of the Code.

B. The Company and the Issuer each covenants that it shall take no action, nor shall the Issuer or the Company approve the Trustee's taking of any action or making of any investment or use the proceeds of the 1992 Series A and B Bonds or any other moneys which may arise out of or in connection with, this Agreement, Indenture or the Project Facilities, which would cause any of the 1992 Series A and B Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code. Without limiting the generality of the foregoing, the Company covenants and agrees to comply with the requirements of Section 148 of the Code as the same may be applicable to the 1992 Series A and B Bonds or the proceeds derived from the sale of the 1992 Series A and B Bonds or any other moneys which arise out of or in connection with, this Agreement, the Indenture or the Project

Facilities. The Company covenants and agrees to pay to the Trustee any moneys which are due to be deposited into the Rebate Fund, at the times stipulated in the Indenture.

C. The Company further agrees that, (i) in the case of the 1992 Series A Bonds, not to exceed 2% of the proceeds of the 1992 Series A Bonds shall be used to pay the cost of issuance of the 1992 Series A Bonds; and (ii) at no time will any funds constituting "gross proceeds" (as used with respect to Section 148 of the Code) of the 1992 Series A and B Bonds be used in a manner as to constitute a prohibited payment under, or in any other fashion that would constitute failure of compliance with Section 148 of the Code.

D. The Company covenants and agrees that at least ninety-five percent (95%) of the net proceeds of the 1992 Series A Bonds, including investment earnings thereon not subject to rebate, will be applied to acquire, construct, install and equip an exempt facility within the meaning of Section 142(a)(1) of the Code and the rules and regulations promulgated thereunder from time to time and that it will not apply such proceeds of the 1992 Series A Bonds in a manner which will result in such proceeds of the 1992 Series A Bonds at any time being used for a facility which would not be exempt under such Section 142(a)(1) or for working capital, for property of a character not subject to the allowance for depreciation as prescribed in Section 167 of the Code and such rules and regulations or for otherwise non-qualifying costs paid or incurred prior to action taken by the Issuer in respect of any of the Project Facilities pursuant to Treas. Reg. § 1.103-8(a)(5)(v). Except for the expenditures described in Section 6.16C. above, nothing in this Section 6.16 is intended to limit the uses to

which any nonqualifying expenditure may be applied by the Company. The Company further covenants and agrees that at least ninety percent (90%) of the net proceeds of the 1992 Series B Bonds, including investment earnings thereon not subject to rebate, will be applied to finance the governmental purpose and project (certain public ways, thoroughfares and roads for the use of the traveling public) for the financing of which the 1992 Series B Bonds are issued. The Company will not cause the Plans and Specifications to be changed or revised, or the Project Facilities to be operated, maintained, repaired or renovated, in a manner, or take or fail to take any other action, such that (i) the Project Facilities to be financed by the application of the proceeds of the 1992 Series A Bonds will not each qualify as an exempt facility within the meaning of Section 142(a)(1) of the Code and the rules and regulations promulgated thereunder and (ii) the Project Facilities to be financed by the application of the proceeds of 1992 Series B Bonds will not constitute a governmental purpose consisting of construction and acquisition of public ways, thoroughfares and roads for the use of the traveling public.

E. Notwithstanding any other provision hereof, the Company covenants and agrees that it will not knowingly take or authorize or permit action to be taken or omit to take any action (to the extent that such action is within the control of the Company) with respect to the Project Facilities, or the proceeds of the 1992 Series A and B Bonds (including investment earnings thereon), insurance, condemnation, or any other proceeds derived directly or indirectly in connection with the Project Facilities, that will knowingly cause the interest on the 1992 Series A or B Bonds to be included in gross income for federal

income tax purposes under Section 103 of the Code (except for any 1992 Series A Bond during any period while any such 1992 Series A Bond is held by a person referred to in Section 147(a) of the Code).

(End of Article VI)

ARTICLE VII.

DAMAGE AND DESTRUCTION; CONDEMNATION

Section 7.01. Damage or Destruction. (a) The proceeds of insurance carried pursuant to Section 5.06 shall be applied as provided in this Section 7.01. In the event that all or any part of the Project Facilities is destroyed in whole or damaged by fire or other casualty the Company shall promptly by written notice notify the Trustee and the Issuer within 30 days of said occurrence as to whether or not the Project Facilities, or the damaged or destroyed portion thereof, shall be reconstructed and reequiped. If the Company shall elect that the Project Facilities or some portion thereof be reconstructed and reequipped, (i) all Net Proceeds with respect to the Project Facilities shall be paid to the Trustee for deposit in a separate account in the Construction Fund and application in accordance with this Section 7.01, or if no 1992 Series A or B Bonds applicable to such destroyed or damaged Project Facilities are Outstanding, shall be so applied by the Company and (ii) the Company will promptly use its best efforts and proceed with reasonable speed and dispatch to reconstruct and reequip the applicable Project Facilities in accordance with the Plans and Specifications to a condition equivalent to that immediately prior to the event of damage or destruction (subject to any changes, modifications, additions and deletions which the Company desires and to which the Issuer con-

sents in accordance with Section 3.01(c) hereof) and will apply for such purposes so much as may be necessary of any such Net Proceeds. In the event that the Net Proceeds are not sufficient to pay in full the costs of such Project Facilities reconstruction and reequipping, the Company will nonetheless complete the work thereof and pay that portion of the costs thereof in excess of the amount of such Net Proceeds, provided that the Company shall have no duty to reconstruct facilities which have been previously transferred to the Issuer unless adequate moneys to reconstruct and reequip such facilities are advanced by the Issuer and provided that the Company may request that Additional Bonds be issued to provide Project Facilities costs. Any balance of Net Proceeds incident to the Project Facilities received by the Trustee remaining after paying therefrom the costs of such reconstruction and reequipping of the Project Facilities pursuant to this Section 7.01 shall be paid to the Trustee for deposit into a separate account in the Bond Fund, and applied, at the direction of the Authorized Company Representative, (a) to purchase 1992 Series A or B Bonds, as applicable, in the open market (excluding any portion of the purchase price which is attributable to interest accrued and/or accruing on such 1992 Series A or B Bonds until the date of purchase) for the purpose of cancellation; (b) to redeem 1992 Series A or Series B Bonds, as applicable (paying principal sums only) for the purpose of cancellation; or (c) to pay the principal of and/or interest on the 1992 Series A or B Bonds, as applicable, or as the Company otherwise directs, provided that if the Company directs the Trustee to apply said balance pursuant to clause (c) above. The Company shall also deliver to the Trustee and the Issuer an opinion of Tax Counsel to the effect that such use will

not impair the exclusion of the interest on the 1992 Series A or B Bonds, as applicable, from gross income for federal income tax purposes. If the Company shall elect that the Project Facilities, or any damaged or destroyed portion thereof, not be reconstructed and reequipped, and any 1992 Series A or B Bonds, as applicable, are then Outstanding, then all Net Proceeds allocable to those portions of the Project Facilities that will not be reconstructed and reequipped shall be paid to the Trustee. Any balance of such Net Proceeds received by the Trustee shall be deposited into a separate account in the Bond Fund, and applied, at the direction of the Authorized Company Representative, (a) to purchase 1992 Series A or B Bonds, as applicable, in the open market (excluding any portion of the purchase price which is attributable to interest accrued and/or accruing on such 1992 Series A or B Bonds until the date of purchase) for the purpose of cancellation; (b) to redeem 1992 Series A or B Bonds, as applicable, (paying principal sums only) for the purpose of cancellation; or (c) to pay the principal of and/or interest on 1992 Series A or B Bonds, as applicable, or as the Company otherwise directs, provided that if the Company directs the Trustee to apply said balance pursuant to clause (c) above, the Company shall also deliver to the Trustee and the Issuer an opinion of Tax Counsel to the effect that such transfer will not impair the exclusion of the interest on the applicable 1992 Series A or B Bonds from gross income for federal income tax purposes. If such Net Proceeds are in excess of the amount required to pay, redeem, purchase in the open market or defease applicable 1992 Series A or B Bonds equal in aggregate principal amount to all the then Outstanding 1992 Series A or B Bonds allocable to such damaged or destroyed portion of the Project Facili-

ties, all such excess shall be paid to the Company as an adjustment of rental payments made pursuant to this Agreement.

(b) The Company shall not, by reason of the payment of any excess costs as required by the foregoing provisions of this Section 7.01 be entitled to any reimbursement from the Trustee or the Issuer or any abatement or diminution of the rents payable under Section 4.03, except as set forth above.

(c) In the event that (i) the Company shall have elected that the damaged or destroyed portion of the Project Facilities shall not be reconstructed and reequipped, or the damaged or destroyed portions of the Project Facilities shall be reconstructed and reequipped at the Company's direction, and (ii) 1992 Series A or B Bonds allocable to the portion of the Project Facilities so damaged or destroyed are not then Outstanding, the Company shall have the right to collect and retain as its own property the Net Proceeds as an adjustment of rental payments made pursuant to this Agreement.

Section 7.02. Condemnation. (a) The Company, or the Issuer immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking of the Project Facilities or any portion thereof for public or quasi-public use, shall notify the Trustee of the pendency of such proceedings.

(b) In the event that title to, or the temporary use of, the Project Facilities or any part thereof shall be taken as a result, or in anticipation of, the exercise of the power of eminant domain by any governmental body or by any person, firm or corporation acting under governmental authority, the provisions of this Section 7.02 shall apply.

(c) Subject to the provisions of Section 10.01 of this Agreement, in the event that all, or any portion of the Project Facilities shall be so taken the Company shall promptly by written notice notify the Trustee and the Issuer whether or not the Project Facilities, or portion thereof so taken, shall be reconstructed and reequipped. In the event the Company determines to reconstruct and reequip the Project Facilities or some portion thereof, (i) the Gross Award in respect of the Project Facilities shall be paid to the Trustee for deposit in a special account or accounts within the Construction Fund and application in accordance with this Section 7.02, or if no 1992 Series A or B Bonds, as applicable, are outstanding shall be so applied by the Company and a separate accounting shall be carried out by the Company as to the Gross Award in respect of the Project Facilities, and (ii) the Company will promptly use its best efforts and proceed with reasonable speed and dispatch to reconstruct and reequip the Project Facilities in accordance with the Plans and Specifications to a condition equivalent to that of the Project Facilities immediately prior to the taking (subject to any changes, modifications, additions and deletions which the Company desires and to which the Issuer consents in accordance with Section 3.01(c) hereof) and will apply for such purposes so much as may be necessary of such Gross Award. In the event that such Gross Award is not sufficient to pay in full the costs of such reconstruction and reequipping of the Project Facilities, the Company will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the amount of such Gross Award provided that the Company shall have no duty to reconstruct facilities which have been previously transferred to the Issuer unless adequate

moneys to reconstruct and reequip such facilities are advanced by the Issuer. If the Company shall elect that all or any portion of the Project Facilities so taken not be reconstructed and reequipped, then the Gross Award allocable to the Project Facilities not being reconstructed or reequipped shall be paid to the Trustee who shall apply all or so much of such Gross Award as shall be required, together with any other moneys then held under the Indenture by the Trustee and available therefor, at the direction of the Company, (a) to purchase 1992 Series A or B Bonds, as applicable, in the open market (excluding any portion of the purchase price which is attributable to interest accrued and/or accruing on such applicable 1992 Series A or B Bonds until the date of purchase) for the purpose of cancellation; (b) to redeem applicable 1992 Series A or B Bonds (paying principal sums only) for the purpose of cancellation; or (c) to pay the principal of and/or interest on the applicable 1992 Series A or B Bonds or as the Company otherwise directs, provided that if the Company directs the Trustee to apply said balance pursuant to clause (c) above, the Company shall also deliver to the Trustee and the Issuer an opinion of Tax Counsel to the effect that such transfer will not impair the exclusion of the interest on the applicable 1992 Series A or B Bonds from gross income for federal income tax purposes.

(d) In case such Gross Award shall exceed the costs of reconstruction and reequipping of the Project Facilities undertaken pursuant to this Section 7.02 and no 1992 Series A or B Bonds, as applicable, are Outstanding, the balance of such Gross Award received by the Trustee remaining after paying therefrom the costs of such reconstruction and reequipping shall be paid to the Company as an adjustment of rental payments made pursuant to this Agreement.

(e) The Company shall not, by reason of payment of any excess costs as required by the foregoing provisions of this Section or by reason of any diminution of all or any part of the Project Facilities resulting from any taking thereof, be entitled to any reimbursement from the Trustee or the Issuer of any abatement or diminution of the rent payable pursuant to Section 4.03, except as set forth above.

(f) In the event that less than the whole or less than substantially the whole of the Project Facilities shall be so taken and the remaining part thereof is reconstructed and reequipped as provided in the preceding subsections of this Section 7.02 and the cost of such reconstruction or reequipping exceeds the Gross Award available therefor, the Company may request the Issuer to issue Additional Bonds to provide moneys to pay all or part of such excess costs.

(End of Article VII)

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following events shall constitute and is referred to in this Agreement as an "Event of Default":

(a) (i) the Company shall fail to pay when due and owing any installment of rental payable pursuant to Section 4.03(a)(ii) or 4.03(b) and such failure shall continue unremedied for a period of five (5) days; or (ii) the Company shall fail to pay when due and owing any installment of rental payable pursuant to Section 4.03(a)(i) or 4.03(c);

(b) a failure by the Company to pay when due any other amount required to be paid under this Agreement or to observe and perform any covenant,

condition or agreement on its part to be observed or performed hereunder (other than a failure described in Section 8.01(a) and other than as provided in Section 6.06), which failure shall continue for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the Company by the Issuer or the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of such period prior to its expiration; provided, that the Issuer and the Trustee shall be deemed to have agreed to an extension of such period if corrective action is initiated by the Company within such period and is being diligently pursued and provided further, that failure by the Company to observe tax covenants herein shall not constitute an Event of Default unless (1) such failure results in a Determination of Taxability and (2) the subject 1992 Series A or B Bonds are not either mandatorily redeemed in accordance with their terms and as provided in the Indenture or defeased as provided in the Indenture prior to such Determination of Taxability.

(c) The Company shall (i) apply for, consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of the Company or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition as a debtor seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in the time provided by law and in an appropriate manner, or acquiesce in writing to, any petition

filed against the Company in an involuntary case under the Bankruptcy Code, or (vii) take any corporate action for the purpose of effecting any of the foregoing; or

(d) A proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution or winding-up, or composition or readjustment of debts of the Company, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the Company or of all or any substantial part of its assets, (iii) similar relief in respect to the Company under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment, or decree approving or ordering the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days from commencement of such proceeding or case or entry of such an order, judgment or decree, or an order for relief against the Company shall be entered in an involuntary case under the Bankruptcy Code.

Section 8.02. Force Majeure. The provisions of Section 8.01 are subject to the following limitations: If by reason of acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; order of any kinds of the government of the United States of America or of the Commonwealth or any department, agency, political subdivision, court or official of any of them or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or

accident to machinery; partial or entire failure of utilities; or any cause or event not reasonably within the control of the Company, the Company is unable in whole or in part to carry out any one or more of its agreements or obligations contained herein (other than its obligations under Sections 4.03, 5.06, 6.01, 6.10, 6.11 and 6.16) the Company shall not be deemed in default by reason of not carrying out said agreement or agreements or performing such obligation or obligations during the continuance of such inability. The Company shall make reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company.

Section 8.03. Remedies.

(a) Whenever any Event of Default referred to in clauses (a), (c) or (d) of Section 8.01 hereof shall have occurred and be continuing, and in accordance with the terms of the Indenture, the 1992 Series A and B Bonds shall have been declared to be immediately due and payable pursuant to any provision of the Indenture, the Trustee shall forthwith declare all amounts payable under this Agreement to be immediately due and payable. The amount payable upon such an event shall be an amount equal to the amounts due and payable on the 1992 Series A and B Bonds, together with all fees and expenses payable pursuant to Sections 6.10 and 8.05 and may thereafter take whatever action at law or in equity to collect any payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under the Lease.

Any waiver of any "Event of Default" under the Indenture and a rescission and annulment of its consequences shall be in writing and shall constitute a waiver of the corresponding Event or Events of Default under this Agreement and a rescission and annulment of the consequences thereof.

(b) Upon the occurrence and continuance of any Event of Default, the Issuer may take, or cause to be taken, any action at law or in equity to collect any payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company hereunder.

(c) Any amounts collected from the Company pursuant to this Section 8.03 shall be applied in accordance with the Indenture.

Section 8.04. No Remedy Exclusive. No remedy conferred upon or reserved to the Issuer hereby is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right of power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 8.05. Reimbursement of Attorneys' Fees. If the Company shall default under any of the provisions

hereof and the Issuer or the Trustee shall employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company contained herein, the Company will on demand therefor reimburse the Issuer or the Trustee, as the case may be, for the reasonable fees and expenses of such attorneys and such other reasonable expenses so incurred, to the extent permitted by law.

Section 8.06. Waiver of Breach. If any obligation created hereby shall be breached by either of the parties and such breach shall thereafter be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. In view of the assignment of certain of the Issuer's rights and interests hereunder to the Trustee, the Issuer shall have no power to waive any default hereunder by the Company in respect of such rights and interests (except Unassigned Rights) without the consent of the Trustee, and the Trustee may exercise any of the rights of the Issuer hereunder.

Section 8.07. Remedies Reserved Solely to the Issuer. (a) Upon the occurrence of any Event of Default referred to in clauses (a), (b), (c) or (d) of Section 8.01 or upon the occurrence of either of the following:

(i) Any event of default shall have occurred and be continuing under the provisions of any ground lease or similar agreement related to any of the Project Facilities and such event of default shall continue unremedied for a period of sixty (60) days after the Issuer shall have given to the Company written notice specifying wherein the Company has failed to

observe or perform any such covenant, agreement or obligation, plus such additional time as is reasonably required to correct any such failure if the Company has initiated corrective action in such sixty (60) day period and is diligently pursuing the same to completion, or

(ii) The Company shall abandon all or substantially all of the Project Facilities, other than pursuant to and as permitted by Section 8.08

at any time thereafter so long as the same shall be continuing the Issuer may, at its election, give the Company written notice of intention to terminate this Agreement (which, if due to a ground lease or similar agreement default shall apply only to the Project Facilities located on the site of such ground lease or similar agreement) on a date specified in said notice, which date shall not be earlier than sixty (60) days after such notice is given, and if all Events of Default and events specified in clauses (i) and (ii) of this Section 8.07 have not been cured on the date so specified and if curative action has not been commenced in accordance with clause (b) of Section 8.01 or clause (i) of this Section 8.07 hereof, the Company's rights to possession of the Project Facilities shall cease (but if due to a ground lease or similar agreement default only with respect to the Project Facilities located on the site of such ground lease or similar agreement), and with or without reentry by the Issuer, this Agreement and term hereof shall thereupon cease, and the Issuer may then reenter and take possession of the Project Facilities located on the site or sites of the applicable ground lease or ground leases or similar agreements, as the case may be, and, the Company shall forthwith surrender possession of the applicable Project Facilities; provided that the Com-

pany shall be, and shall remain, liable for all rentals accrued hereunder to the date such termination becomes effective and for all other sums then owing by the Company hereunder; and provided further, that notwithstanding the termination of this Agreement and the term hereof or any reentry by the Issuer upon such termination, as aforesaid, the Company nevertheless shall continue to be liable for the payment of all rentals reserved under Section 4.03 and shall pay such rentals at the same time and in the same manner as provided in Section 4.03.

(b) In the event the Company abandons a portion of the Project Facilities, at any time thereafter so long as the same shall be continuing the Issuer may, at its election, give the Company written notice of intention to terminate the provisions of this Agreement as they pertain to the abandoned portion of the Project Facilities on a date specified in such notice, which date shall not be earlier than thirty (30) days after such notice is given, and if such abandonment shall continue on the date so specified, the Company's rights to possession of the abandoned portion of the Project Facilities shall cease, and with or without reentry by the Issuer, the provisions of this Agreement as they pertain to the abandoned portion of the Project Facilities, shall thereupon cease, and the Issuer may then reenter and take possession of the abandoned portion of the Project Facilities, and the Company shall forthwith surrender possession of the abandoned portion of the Project Facilities; provided, that the Company shall be, and shall remain, liable for all rental accrued hereunder to the date such termination becomes effective and for all other sums then owning by the Company hereunder; and provided further, that notwithstanding the termination of this Agreement and the term hereof as it per-

tains to the abandoned portion of the Project Facilities, or any reentry by the Issuer upon such termination, as aforesaid, the Company nevertheless shall continue to be liable for the payment of all rentals reserved under Section 4.03 and shall pay such rentals at the same time and in the same manner as provided in Section 4.03.

(c) The Company shall remain liable for all rentals reserved herein, and no reentry shall relieve it of its obligations hereunder to pay such rentals, all of which shall survive such reentry and whether or not the Project Facilities or any parts thereof have been relet, provided, however, that the Issuer shall nevertheless be obligated to use its best effort to relet any such vacated portion or portions of the Project Facilities and to credit all rentals derived from any such reletting to the rentals payable by the Company under this Agreement and once such rentals are paid, to the rentals under the ground leases or similar agreements. Neither notice to pay rentals or to deliver up possession of the Project Facilities given pursuant to law, nor any proceeding taken by the Issuer, nor the failure by the Company for any period of time to pay any of the rentals herein reserved, shall of itself operate to terminate this Agreement, and no termination of this Agreement on account of an Event of Default shall be or become effective, either by operation of law or by the action of the Issuer or of the Company, or otherwise, except only in the manner expressly provided above in this Section.

(d) If upon reentry of the Project Facilities, or any portion thereof, there remains on or in the Project Facilities any personal property of the Company or of any other person upon the premises, the Issuer may, but without the obligation to do so,

remove such equipment or personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and the Company shall reimburse the Issuer or others for any expense incurred by the Issuer in connection with such removal and storage. The Issuer shall have the right to sell such stored property provided that it shall give the Company not less than thirty (30) days, written notice, in advance, that it intends to conduct such a sale. In lieu of selling the equipment or other personal property the Issuer may, at its option, rent or let the equipment or any remaining personal property to any tenant or tenants at the Airport for the fair rental value thereof provided that it shall give the Company not less than thirty (30) days written notice in advance that it intends to rent or let the equipment such personal property. The proceeds of such sale or letting shall be applied first to the cost of such sale, second to the payments of the charges for storage, and third to the payment of any other amounts which may then be due from the Company to the Issuer under this Agreement, fourth, to the extent that such amounts represent the sale proceeds of equipment and property, to the payment, redemption, purchase in the open market or at private sale or defeasance of Outstanding 1992 Series A Bonds, if any, and the balance, if any, shall be paid to the Company.

Section 8.08. Termination by the Company After 1992 Series A and B Bonds Are Paid or Defeased. At any time after all of the 1992 Series A and B Bonds issued under the Indenture have been paid in full, or provisions for the timely payment thereof have been duly made and provided for, and the lien of the Indenture has been defeased according to Article VIII

thereof, the Company may terminate its obligations hereunder as to the Project Facilities upon the occurrence of any one or more of the following events, in addition to any other rights the Company may have:

(a) If the Company shall be prevented from operating its air transportation system to and from the Airport or the Project Facilities, or any part thereof, by reason of its inability to use a substantial part or all of the air transportation facilities at the Airport:

(i) for a period longer than thirty (30) consecutive days, resulting from any condition of the Airport not due to the fault of the Company; or

(ii) for a period longer than ninety (90) consecutive days, resulting from a permanent injunction issued by any court of competent jurisdiction; or

(iii) for a period longer than ninety (90) consecutive days, resulting from any order, rule or regulation of the Federal Aviation Administration, the Civil Aeronautics Board, or either of their successors or other governmental agency having jurisdiction over the operations of the Company with which the Company is unable to comply at reasonable cost or expense; or

(iv) because of the suspension, cancellation or termination, occurring involuntarily without the Company's concurrence, of the Company's Certificate(s) of Public Convenience and Necessity or other authority issued by the Civil Aeronautics Board, or its successor, granting the right to serve the City of Cincinnati or the Airport.

(b) If the Issuer shall fail to observe or perform any of the Issuer's covenants, agreements or obligations hereunder and such failure shall continue

unremedied for a period of sixty (60) days after the Company shall have given to the Issuer written notice specifying wherein the Issuer has failed to observe or perform any such covenant, agreement or obligation, plus such additional time as is reasonably required to correct any such failure if the Issuer has instituted corrective action within sixty (60) day period and is diligently pursuing the same to completion.

The provisions of subsection (b) of this Section 8.08 is subject to the following limitations: if by reason of force majeure the Issuer is unable in whole or part to carry out any of its agreements contained herein, other than any obligation to pay money, the Issuer shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the Commonwealth or of any of their departments, agencies or officials (other than the Issuer), or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; and any other cause or event not reasonably within the control of the Issuer. The Issuer agrees, however, if practicable at reasonable cost (in the Issuer's judgement) and subject to the remaining terms hereof, to remedy with all reasonable dispatch the cause or causes preventing the Issuer from carrying out its agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Issuer.

No waiver, expressed or implied, of default by the Company of any of the terms, covenants or conditions hereof to be performed, kept and observed by the

Issuer shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Issuer. The payment of rentals or the performance of all or any part of this Agreement by the Company for or during any periods after default of any of the terms, covenants or conditions herein contained to be performed, kept, or observed by the Issuer shall not be deemed a waiver of any right on the part of the Company to cancel this Agreement as aforesaid for failure by the Issuer to so perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed.

Section 8.09. Termination of Ground Lease or Related Agreement. The termination of any ground lease or other similar agreement for any site as to which any of the Project Facilities will be or are located in accordance with its or their terms shall automatically terminate this Agreement as to the particular Project Facilities located on the site as to which such ground lease or other similar agreement has been terminated.

(End of Article VIII)

ARTICLE IX.

REDEMPTION OF 1992 SERIES A and B BONDS: COMPLIANCE WITH INDENTURE

Section 9.01. Redemption of 1992 Series A and B Bonds. The Company shall have the option to prepay the rents due hereunder at any time in whole or in part in order to defease all or a portion of the 1992 Series A or B Bonds under the circumstances provided in Article VIII of the Indenture or to provide for the redemption of 1992 Series A or B Bonds pursuant to Article III of the Indenture. The Issuer shall take, or cause to be taken, the actions required by the

Indenture to discharge the lien thereof through the redemption, or provision for payment or redemption, of all 1992 Series A or B Bonds then Outstanding, or to effect the redemption, or provision for payment or redemption, of less than all the 1992 Series A or B Bonds then Outstanding, upon receipt, not less than five Business Days prior to the day on which the Registrar shall be required to give notice of any such redemption or payment pursuant to the Indenture, by the Issuer, the Registrar and the Trustee from the Company of a notice designating the principal amount of the 1992 Series A or B Bonds to be redeemed, or for the payment or redemption of which provision is to be made, and specifying the date of redemption and the applicable redemption. provision of the Indenture. In addition, the Company shall simultaneously with such notice, furnish to the Registrar a proposed form of notice of such redemption as required by the Indenture. In connection with any redemption pursuant to Section 3.01(d) of the Indenture, the Company shall also deliver to the Trustee the certificate of the Company required by such Section. Pursuant to Section 4.03, the Company shall provide, any moneys required by the Indenture to be deposited with the Trustee or otherwise paid by the Issuer in connection with any of the foregoing purposes.

Section 9.02. Mandatory Redemption of 1992 Series A or B Bonds Upon Determination of Taxability. The Issuer and the Company shall take all actions required to mandatorily redeem 1992 Series A or B Bonds upon the terms specified in this Agreement and in Section 3.01(e) of the Indenture following the occurrence of a Determination of Taxability, including, but not limited to, prepaying appropriate amounts due on the 1992 Series A or B Bonds in order to effect

such redemption. The 1992 Series A or B Bonds shall be redeemed by the Issuer, in whole, or in such part as described below, at a redemption price equal to 100% of the principal amount thereof, without redemption premium, plus accrued interest, if any, to the redemption date, within 180 days following the receipt by the Trustee of written notice from a current or former registered owner of a 1992 Series A or B Bond or from the Company of (i) the issuance of a published or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Company participated or has been given the opportunity to participate, and which ruling or memorandum the Company, in its discretion, does not contest or from which no further right of judicial review or appeal exists, or (ii) a final determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Company has participated or has been a party, or has been given the opportunity to participate or be a party (either such event being a "Determination of Taxability"), in each case, to the effect that, as a result of a failure by the Company to observe any covenant or agreement of the Lease or the inaccuracy of any Company representation or warranty therein, the interest on the 1992 Series A or B Bonds of a Series is included in the gross income of the owners thereof for federal income tax purposes, other than with respect to the 1992 Series A Bonds, a person who is a "substantial user" or a "related person" of a substantial user within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); provided, however, that no such Determination of Taxability shall be considered to exist unless (i) the registered owner or former registered owner of the 1992 Series A or B

Bond involved in such proceeding or action (A) gives the Company and the Trustee prompt notice of the commencement thereof, and (B) (if the Company agrees to pay all expenses in connection therewith) offers the Company. the opportunity to control unconditionally the defense thereof, and (ii) either (A) the Company does not agree within 30 days of receipt of such offer to pay such expenses and liabilities and to control such defense, or (B) the Company shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Company determines to be appropriate. No Determination of Taxability described above will result from the inclusion of interest on any 1992 Series A or B Bond in the computation of minimum or indirect taxes or if the events which would otherwise give rise to a Determination of Taxability are the result of a change in the Code or the Income Tax Regulations promulgated pursuant to the Code or, if applicable, the Internal Revenue Code of 1954 (the "Income Tax Regulations"), enacted and becoming effective after the date of issuance of the 1992 Series A and B Bonds. All of the 1992 Series A and B Bonds shall be redeemed upon a Determination of Taxability as described above unless, in the opinion of Bond Counsel, redemption of a portion of the 1992 Series A or B Bonds of one or more series or one or more maturities would have the result that interest payable on the remaining 1992 Series A and B Bonds outstanding after the redemption would not be so included in any such gross income.

Promptly upon learning of the occurrence of a Determination of Taxability (whether or not the same is being contested), or any of the events described in

this Section 9.02, the Company shall give notice thereof to the Trustee and the Issuer.

(End of Article IX)

ARTICLE X.

MISCELLANEOUS

Section 10.01. Notices. Except as otherwise provided in this Agreement, all notices, certificates, requests, requisitions and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested addressed as provided in Section 14.08 of the Indenture. A copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Company, the Trustee, the Registrar or the Paying Agent shall also be given to the others. Any of the foregoing may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 10.02. Parties in Interest. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns, and no other person, firm or corporation, other than the Trustee shall have any right, remedy or claim under or by reasons of this Agreement.

Section 10.03. No Personal Liability. (A) No covenant, obligation or agreement of the Issuer shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the Issuer in other than his official capacity, and neither the members of the Issuer nor any official executing the 1992 Series A and B Bonds

shall be liable personally on the 1992 Series A and B Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Agreement or in the Indenture.

(B) No covenant, obligation or agreement of the Company shall be deemed to be a covenant, obligation or agreement of any present or future officer, agent or employee of the Company in other than his official capacity, and neither the officers, agents or employees of the Company nor any officer executing this Agreement shall be liable personally on the Agreement or the 1992 Series A and B Bonds or be subject to any personal liability or accountability by reason of the delivery or issuance thereof, respectively or by reason of the covenants, obligations or agreements of the Company contained in this Agreement.

Section 10.04. Amendments. This Agreement may be amended only by written agreement of the parties hereto, subject to the limitations set forth herein and in the Indenture.

Section 10.05. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

Section 10.06. Severability. If any clause, provision or section of this Agreement shall, for any reason, be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

Section 10.07. Governing Law. The laws of the Commonwealth shall govern the construction and enforcement of this Agreement.

(End of Article XI)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

KENTON COUNTY AIRPORT BOARD

By: Frank (Al) Schleper
Frank (Al) Schleper
Chairman

(SEAL)
Attest:

By: John L. Brockett
John L. Brockett
Secretary

DELTA AIR LINES, INC.

By: Frank S . Chew
Title: Frank S. Chew
Vice President - Treasurer

(SEAL)
Attest:

By: LESLIE P. KLEMPERER
LESLIE P. KLEMPERER
ASSISTANT SECRETARY

ACKNOWLEDGEMENT OF KENTON COUNTY AIRPORT BOARD

COMMONWEALTH OF KENTUCKY
COUNTY OF BOONE

The foregoing Lease Agreement was acknowledged under oath before me this 13th day of February, 1992, by Frank (Al) Schieper and John L. Brockett, being known to me to be the Chairman and the Secretary-Treasurer, respectively, of the Kenton County Airport Board, a public and governmental body politic and corporate organized and existing under the laws of the Commonwealth of Kentucky, on behalf of such Board.

Dated: Feb. 13, 1992

(SEAL)

/s/ Carrall A. Dimarent
Notary Public

Notary Public, State at Large, KY
My Commission expires Sept. 12, 1993

ACKNOWLEDGEMENT OF DELTA AIR LINES, INC.

STATE OF GEORGIA
COUNTY OF FULTON

I, the undersigned, a Notary Public in and for such County and such State, DO HEREBY CERTIFY that the foregoing Lease Agreement was acknowledged under oath before me this 27th day of February, 1992 by Frank S. Chew and Leslie Klemper being known to me as Vice President-Treasurer and Assistant Secretary, respectively, of Delta Air Lines, Inc. for and as the act of Delta to Air Lines, Inc.

Given under my hand and seal of office.

/s/ Cynthia P. Meyer
Notary Public

My commission expires 7-10-94

* * *

This document was prepared by Spencer E. Harper, Jr., Harper, Ferguson & Davis, 310 W. Liberty Street, Louisville, Kentucky 40202.

/s/ Spencer E. Harper Jr.
Spencer E. Harper Jr.
Attorney At Law

EXHIBIT A TO LEASE AGREEMENT
THE PROJECT FACILITIES

A. Project Facilities Financed by Application of the Proceeds of the 1992 Series A Bonds:

1. BUS HOLDROOM/BAG CLAIM "D"

A temporary bus holdroom and bag claim facility of approximately 40,000 square feet has been constructed adjacent to existing Terminal "D". This facility will provide space for baggage claim, car rental and courtesy shuttle services until the new Terminal "D" is constructed and occupied.

The facility is also being used as a temporary holdroom for passengers being bussed to and from certain remote aircraft parking positions. This operation is expected to be in service until the underground Automated Guideway Transit System ("AGTS"), new Terminal "D", pedestrian tunnels, and new Concourse "E" are completed. Demolition of this facility will be performed during the demolition of existing Terminal "D".

2. TERMINAL "D"

A new Terminal "D" of approximately 350,000 square feet will be constructed to replace the existing Terminal "D". This new facility will include, without limitation, the following types of space: ticketing, bag make-up/sortation, bag claim, AGTS, concession, office, mechanical/electrical/plumbing and fire protection and Delta Dash. The new Terminal "D" will be connected to the existing parking deck via an underground pedestrian tunnel.

3. CONCOURSE "D"

The West end of Concourse "D" will be expanded and modified to facilitate connection to the AGTS

tunnel, to provide for possible expansion on the West side in the future, to add one gate, to provide space for the new baggage conveying system and to accommodate the expansion of certain Delta Air Lines, Inc. functions into the space which will be vacated by the existing. Federal Inspection Service facility.

4. CONCOURSE "E"

A Concourse "E" will be constructed south of and parallel to existing Concourse "D" with approximately twenty-eight (28) gates. This concourse is expected to include without limitation, the following types of space: baggage systems, mechanical/electrical/ plumbing and fire protection systems, operations space, a Federal Inspection, Service facility, holdrooms, office space, circulation space, concessions, passenger service rooms and ramp control.

5. AGTS

An Automated Guideway Transit System will be acquired and installed to move people between new Terminal "D", Concourse D and new Concourse "E".

6. AGTS TUNNEL

The Automated Guideway Transit System tunnel will connect the new Terminal "D" with both Concourses "D" and "E". The tunnel will contain the AGTS people mover system, a high speed baggage conveying system, a pedestrian mall and certain utilities.

7. AIRCRAFT DEICING

The existing hot water and glycol storage tank system supporting aircraft deicing operations will be expanded.

8. FUELING

This Project will consist of construction of increased fuel storage capacity, an expanded fuel distribution system, increased hydrant pumping capacity and the relocation of the existing truck fueling storage/ dispenser facility.

9. AIR CARGO/CABIN SERVICE COMPLEX

The air cargo/cabin service complex will be expanded.

10. MAIL SORTATION/MATERIAL HANDLING

Mail sortation and material handling systems will be included in the air cargo/cabin service facilities to permit the automated sortation of air cargo and mail.

11. EMPLOYEE PARKING

A parking lot primarily for employees of Delta Air Lines, Inc. has been constructed on approximately 35 acres.

12. APRON IMPROVEMENTS

Ramp areas located above the AGTS tunnel and adjacent to Terminal "D" and Concourse "D" will be paved. Ramp areas adjacent to and extending approximately 25 feet from Concourse "E" will be paved.

13. CENTRAL UTILITY PLANT

A central utility plant will be constructed in new Terminal "D" and will house certain heating and ventilation equipment.

14. BAGGAGE CONVEYING SYSTEM

A baggage conveying system and related tunnels will be constructed to handle originating, termi-

nating, on-line, interline and international baggage.

15. COMMUNICATIONS SYSTEM

A new flight information display system, baggage information display system and public address system will be installed in new Terminal "D", new Concourse "E" and in the AGTS tunnel.

16. INTERIOR SIGNAGE AND FURNISHINGS

Certain interior signage and furnishings for the Project will be constructed or acquired and installed.

17. LOADING BRIDGES

Approximately 28 additional loading bridges will be designed, fabricated and installed and certain existing bridges will be reconfigured.

18. AIRCRAFT PRECONDITIONED AIR 400 HZ POWER

Preconditioned air facilities and 400 HZ power systems will be constructed for the new loading bridges installed at Concourse "E". The existing preconditioned air and 400 HZ systems at Concourse "D" will be upgraded.

19. MISCELLANEOUS APRON EQUIPMENT

Water cabinets and aircraft parking lights will be acquired and installed.

20. ADDITIONAL FACILITIES OR EQUIPMENT

Additional airport facilities or equipment determined by Delta Air Lines, Inc. to be necessary or appropriate for the efficient utilization of the foregoing facilities may be acquired, constructed and installed at the Airport. Certain utilities will

be modified, replaced or relocated in connection with the project generally.

* * *

B. Project Facilities Financed by Application of the Proceeds of the 1992 Series B Bonds:

ROADWAY SYSTEM

A new roadway system will be constructed to provide a grade level roadway system for baggage claim and deplaning passengers and an elevated roadway system at the ticketing level for enplaning passengers. A separate roadway will be built to enable traffic to by-pass Terminal "D". A third lane has been added to the existing entry road. Certain related temporary improvements may be included in this project.

* * *

C. Project Facilities Constituting Related Facilities.

1. TERMINAL "D" BAG CLAIM AND BAG MAKE-UP. A portion of the new Terminal "D" bag claim facility and bag make-up facility will replace similar facilities which will be removed to accommodate Construction and Acquisition of the Project Facilities. The removed facilities were financed by application of proceeds of the Issuer's "Weekly Adjustable/Fixed Rate Special Facility Revenue Bonds, Series 1985 (Delta Air Lines, Inc. Project)" (the "1985 Bonds"). Pursuant to Section 5.4 of the Lease Agreement dated as of December 1, 1985 (as amended through January 18, 1988) between the Issuer and the Company (the "1985 Lease") upon removal of the bag claim and bag make-up facilities financed by proceeds of the 1985 Bonds and completion of the new Terminal "D" bag claim and bag make-up facil-

ity, the following described facilities shall become facilities subject to the provisions of the 1985 Lease: Approximately 10,000 square feet of New Terminal "D" Bag Claim facility as identified on Appendix No. 1 to this Exhibit A to Lease Agreement and approximately 4,500 square feet of New Terminal "D" bag make-up space as identified on Appendix 2 to this Exhibit A to Lease Agreement.

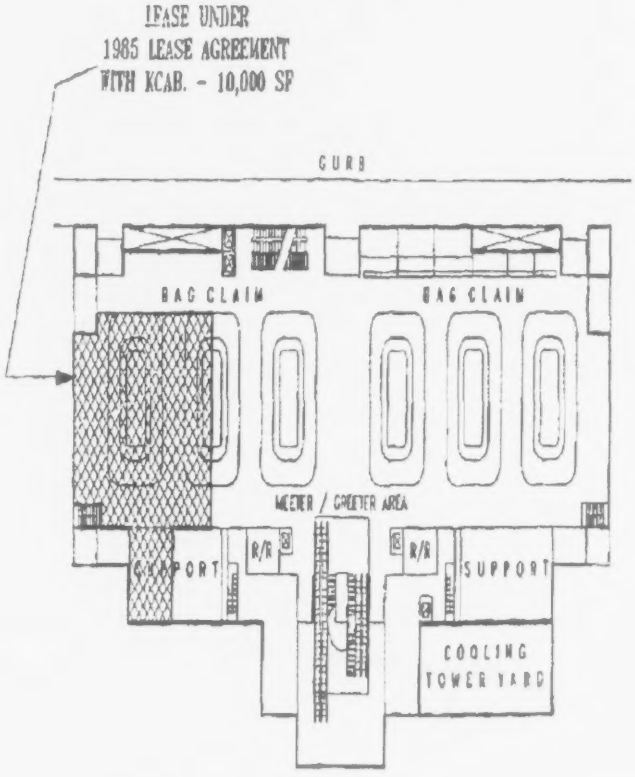
2. FUEL FARM IMPROVEMENTS. Certain fuel farm improvements will be Constructed and Acquired as described in Item 8 in Category A above. Upon completion, such fuel farm storage, distribution and related facilities will become the subject of a separate, prior lease agreement between the Issuer and a subsidiary of the Company, which lease will be assigned to the Company and amended such that the term shall be coincident with the term of the Agreement.

3. PUBLIC WAYS, THOROUGHFARES AND ROADS. Upon completion, the public ways, thoroughfares and roads for the use of the general public will be operated, maintained and insured by the Issuer and will not be leased by the Company. Such facilities are described under Category B above.

* * *

Certain of the above-referenced Project Facilities to be leased under this Agreement upon completion will be located on the parcels identified on Exhibit B attached hereto.

EXHIBIT A; APPENDIX No. 1



BAG CLAIM LEVEL
NEW TERMINAL D

DELTA AIR LINES

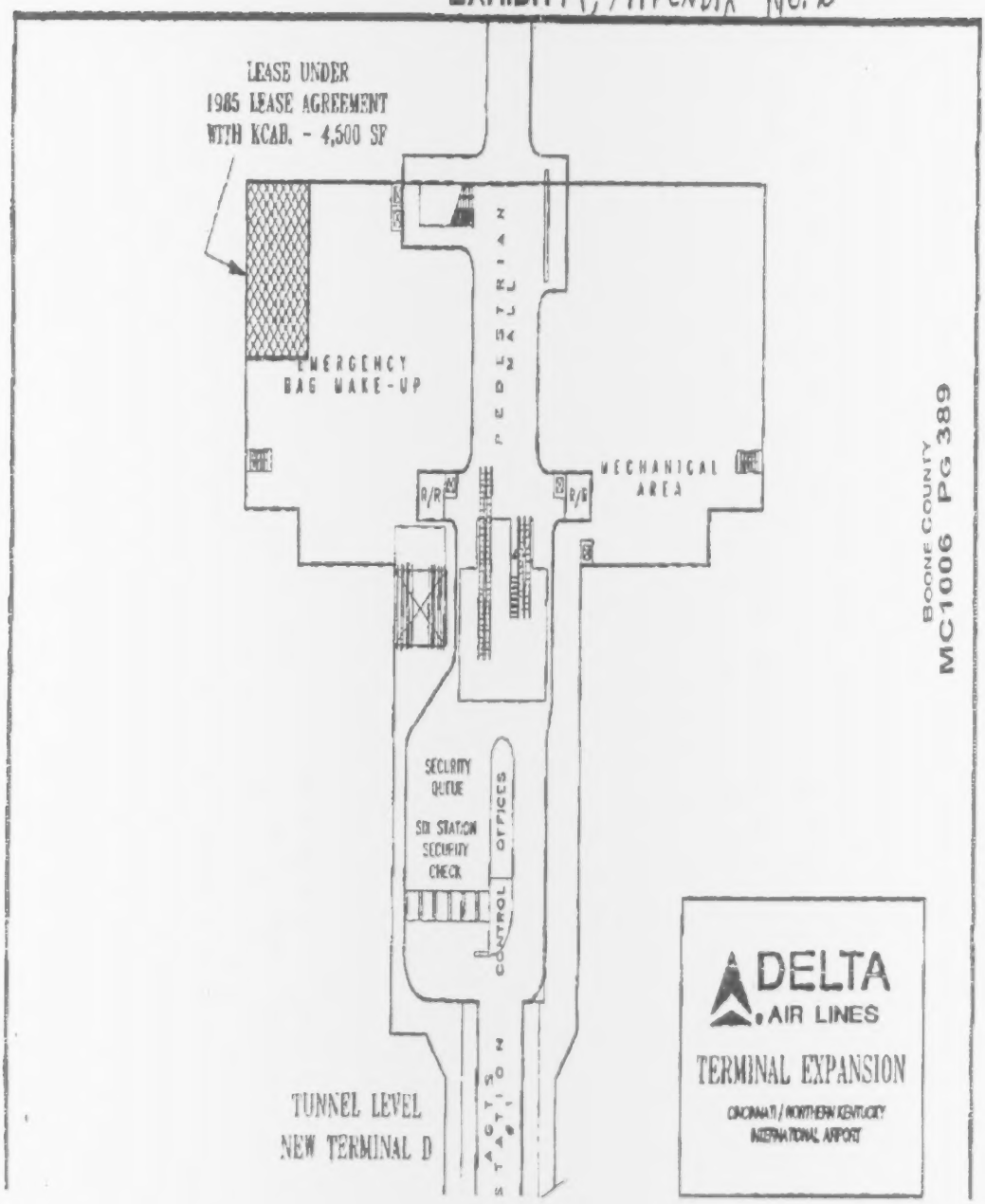
TERMINAL EXPANSION

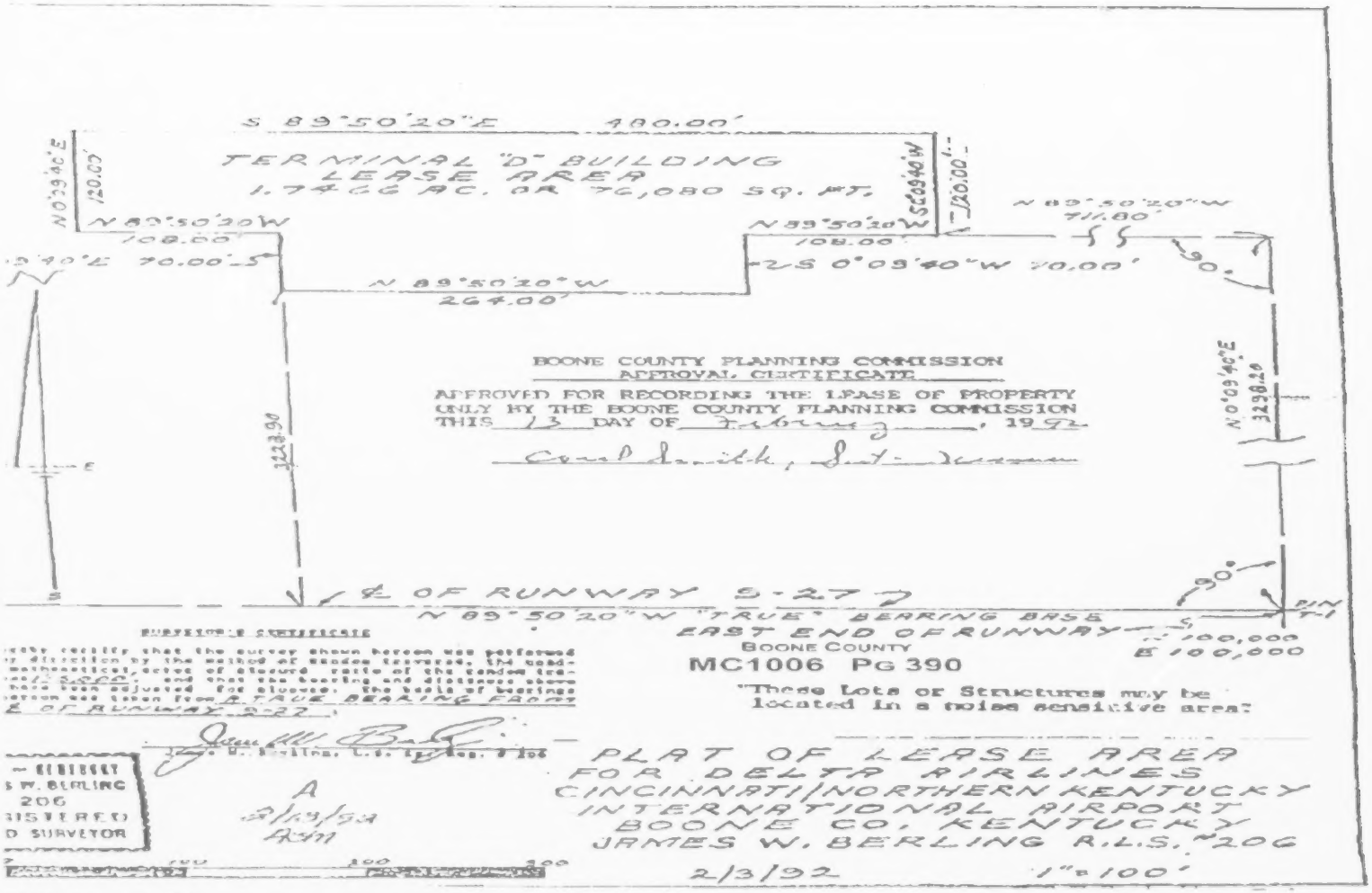
CINCINNATI / NORTHERN KENTUCKY
INTERNATIONAL AIRPORT

BOONE COUNTY
MC1006 PG 388

FROM DELTA LBU

EXHIBIT A; APPENDIX NO. 2




S 89°50'20"E 480.00'
TERMINAL "D" BUILDING
LEASE AREA
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N 89°50'20"W
708.00'
N 89°50'20"W
264.00'
S 89°50'20"E
480.00'
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120.00'
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711.80'
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120.00'
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3238.20'
1228.90'
℄ OF RUNWAY 9-27
N 89°50'20"W "TRUE" BEARING BASE
EAST END OF RUNWAY
BOONE COUNTY
MC1006 PG 390
N 100,000
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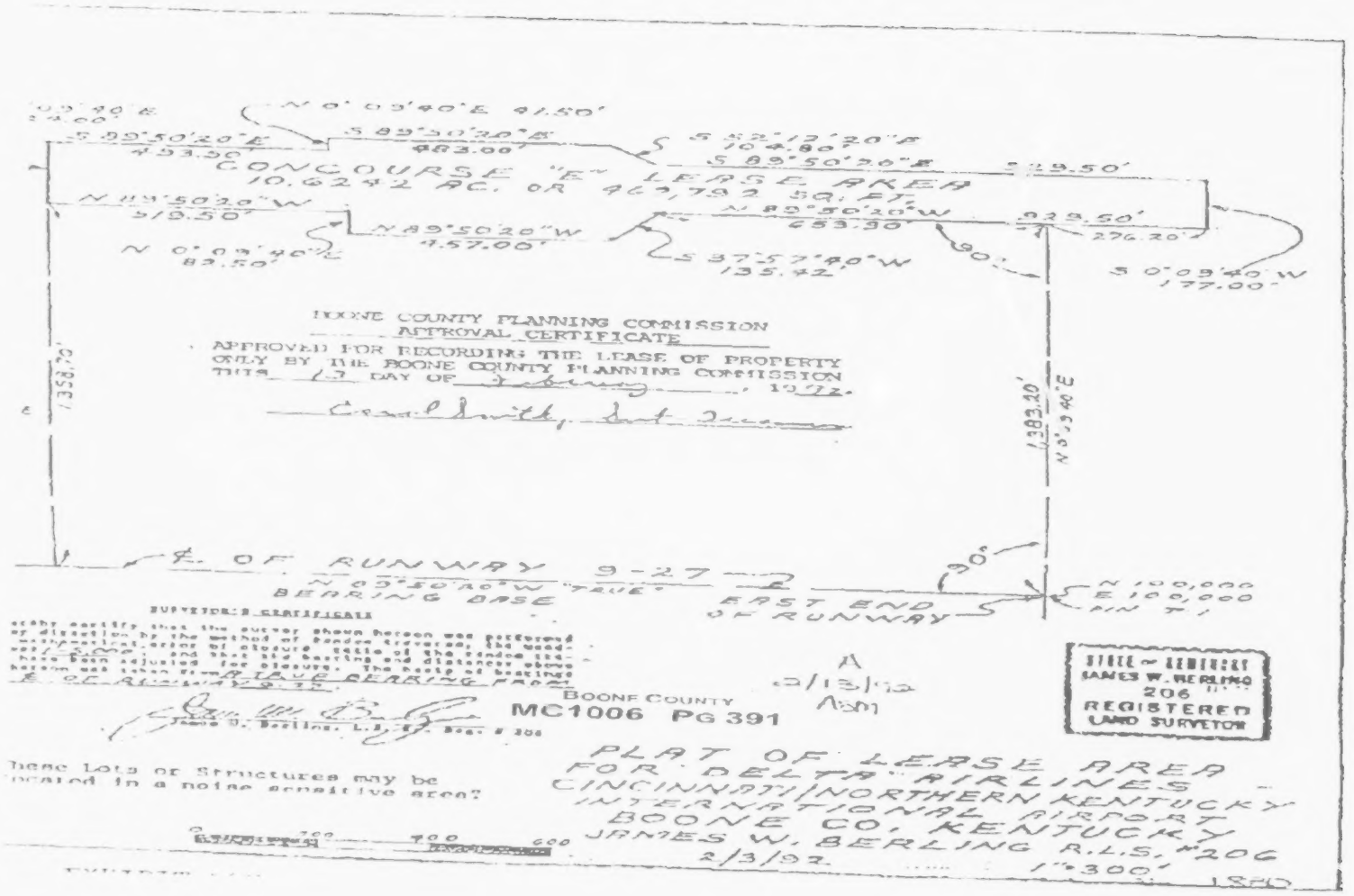
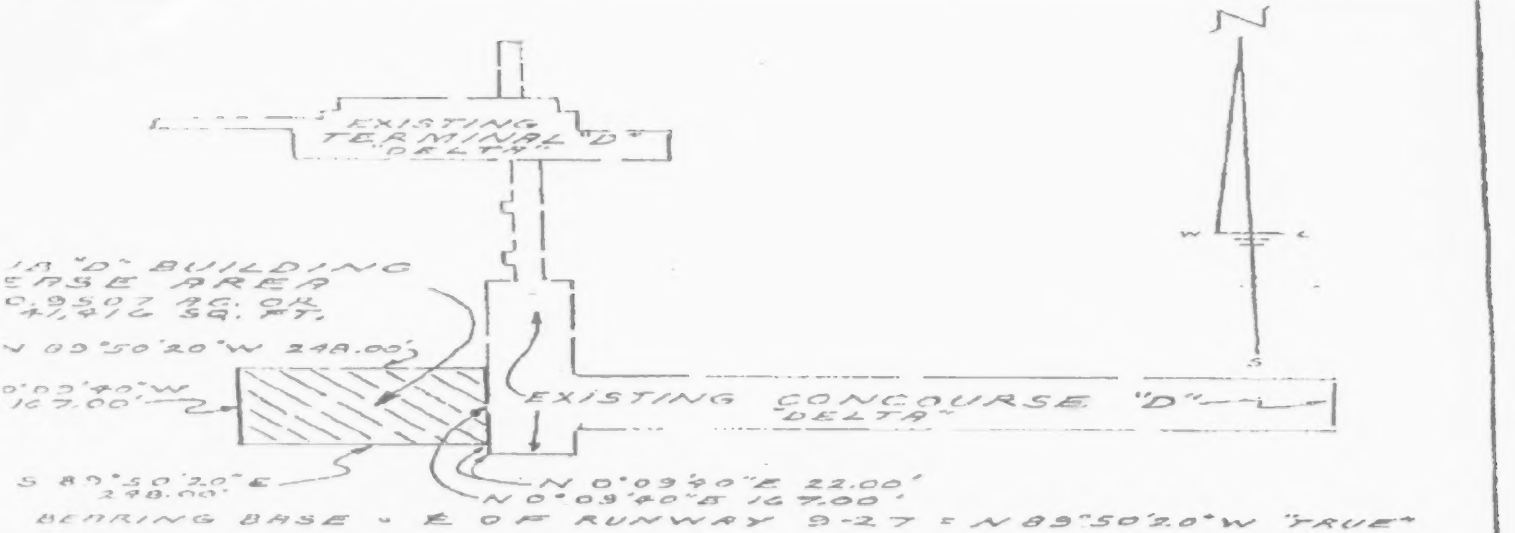
BOONE COUNTY PLANNING COMMISSION
APPROVAL CERTIFICATE
APPROVED FOR RECORDING THE LEASE OF PROPERTY
ONLY BY THE BOONE COUNTY PLANNING COMMISSION
THIS 13 DAY OF February, 1992
Carol Smith, Executive Director
SURVEYOR'S CERTIFICATE
I hereby certify that the survey shown hereon was performed by me or under my direct supervision; that the ratio of precision of the unadjusted survey is 1:5000+; and that the bearings and distances shown hereon were taken from A TRUE BEARING FROM ℄ OF RUNWAY 9-27
James W. Berling, L.S. No. 1206
JAMES W. BERLING
L.S. 1206
REGISTERED
LAND SURVEYOR
A
2/14/92
AJM
"These Lots or Structures may be located in a noise sensitive area"
PLAT OF LEASE AREA
FOR DELTA AIRLINES
CINCINNATI/NORTHERN KENTUCKY
INTERNATIONAL AIRPORT
BOONE CO. KENTUCKY
JAMES W. BERLING R.L.S. #206
2/3/92
1"=100'

EXHIBIT B(1)


N 0° 03'40"E 91.50'
S 89°50'20"E
463.00'
S 89°50'20"E
529.50'
CONCOURSE "E"
10.6242 AC. OR 462,793 SQ. FT.
LEASE AREA
N 89°50'20"W
529.50'
N 89°50'20"W
463.00'
N 89°50'20"W
457.00'
N 0°03'40"E
83.50'
S 37°57'40"W
135.42'
S 0°03'40"W
177.00'
BOONE COUNTY PLANNING COMMISSION
APPROVAL CERTIFICATE
APPROVED FOR RECORDING THE LEASE OF PROPERTY ONLY BY THE BOONE COUNTY PLANNING COMMISSION THIS 13 DAY OF February, 1992.
Carol Smith, Asst. Secy.
1358.70'
1383.10'
N 0°03'40"E
℄ OF RUNWAY 9-27
N 05°50'40"W "TRUE" BEARING BASE
EAST END OF RUNWAY
N 100,000
E 100,000
PIN #1
SURVEYOR'S CERTIFICATE
STATE OF KENTUCKY
JAMES W. BERLING
206
REGISTERED LAND SURVEYOR
BOONE COUNTY
MC1006 PG 391
These Lots or Structures may be located in a noise sensitive area?
PLAT OF LEASE AREA
FOR DELTA AIRLINES
CINCINNATI/NORTHERN KENTUCKY
INTERNATIONAL AIRPORT
BOONE CO., KENTUCKY
JAMES W. BERLING R.L.S. #206
2/3/92
1"=300'
ISSD



SURVEYOR'S CERTIFICATE

I hereby certify that the survey shown hereon was performed by me or under my direction by the method of random traverse; the bound-ing mathematical errors of closure, ratio of the closure is not less than 1:5000; and that the bearing and distances shown on this plat are adjusted to the above. The Basis of Bearing is hereon was taken from E. OF RUNWAY 9-27.

James W. Berling, L.L.S. No. 206

BOONE COUNTY PLANNING COMMISSION
APPROVAL CERTIFICATE

APPROVED FOR RECORDING THE LEASE OF PROPERTY ONLY BY THE BOONE COUNTY PLANNING COMMISSION THIS 13 DAY OF February, 1992.

Chairman, Secretary-Treasurer

"These Lots or Structures may be located in a noise sensitive area"

BOONE COUNTY
MC1006 PG 392

STATE OF KENTUCKY
JAMES W. BERLING
206
REGISTERED
LAND SURVEYOR

A
2/13/92
AEM

PLAT OF LEASE AREA
FOR DELTA AIRLINES
CINCINNATI/NORTHERN KENTUCKY
INTERNATIONAL AIRPORT
BOONE CO. KENTUCKY
JAMES W. BERLING R.L.S. #206

2/3/92 1"=200'

EXHIBIT B(3)

* LAND SURVEYORS CERTIFICATE *

I, David E. Estes, a registered land surveyor in the state of Kentucky, do hereby certify that this survey shown hereon was performed under my direct supervision in February 1992. I further certify that I have examined the records at the Boone County Court Clerk and find that this is the listed conveyance and reads under the present ownership and the parcel has since 1968 or from the adoption of KRS 100.

DAVID E. ESTES L.S. 2176 DATE 2-21-92

* P.C.P.C. APPROVAL CERTIFICATE *

Approval for recording the transfer or lease only by the Boone County Planning Commission this 25th day of February, 1992.

Chairman/Vice President/Secretary

This area is within the Airport Noise Sensitivity Zones as described by the Boone County Zoning Regulations

VICINITY MAP

Group No. 2021

○ Denotes existing fence post
⊔ Denotes point in R/W

Graphic Scale 1" = 400'

I-275

DELTA EMPLOYEE PARKING LOT
1405823 Square Feet
32.2733 Acres

STATION 82+00
110.00 Right
Axis

STATION 83+00
105.00 Right

DONALDSON ROAD

Cincinnati/Northern Kentucky International Airport

BULLSHEET NO: 920208
PLOTTED ON: OCTOBER 02, 2004 01:49:15 PM
TOTAL FEES: $156.00
LEVIS: 1 PAGE
COUNTY CLERK: ROBILYN A. ROSE
COUNTY: BOONE COUNTY CLERK
DEPUTY CLERK: BARBARA

BOOK MC1006 PAGES 319 - 393

Being the same property conveyed to the Kenton County Airport as found in D.B. 187, Pg. 28, D.B. 189 Pg. 306, D.B. 192 Pg. 386, Group No. 2021, of the Boone County Clerk's Office in Burlington, Kentucky.

The source of bearings and distances for this survey are based upon the Greater Cincinnati/Northern Kentucky International Airport grid system.

NOTE: The plat shown hereon represents an actual field boundary survey performed by David E. Estes Engineering Corp. in February 1992.

A	N	61	11	57	W	37.83	P	N	48	29	47	E	261.49
B	N	44	25	04	W	95.64	Q	N	48	28	47	E	31.51
C	N	00	18	24	E	171.75	R	N	42	32	15	E	18.35
D	N	43	38	16	W	447.87	S	N	37	17	02	E	120.48
E	N	46	37	48	E	210.16	T	N	26	26	59	E	412.46
F	N	55	46	10	E	9.35	U	N	28	47	18	E	830.54
G	N	61	59	12	E	188.22	V	N	55	56	53	W	80.78
H	N	46	31	38	E	310.01	W	N	51	44	51	W	108.95
I	N	44	40	19	E	9.48	X	N	58	14	20	W	414.90
J	N	49	37	16	E	10.12	Y	N	54	48	20	W	88.37
K	N	73	47	07	E	9.61	Z	N	54	49	40	W	163.28
L	N	86	11	57	E	9.13	AA	N	66	06	47	W	220.35
M	N	65	12	19	E	8.44	BB	N	68	12	18	W	150.74
N	N	46	28	55	E	198.50	CC	N	75	16	54	W	159.80
O	N	42	30	55	W	37.08	DD	N	79	30	53	W	212.14

STATE OF KENTUCKY
DAVID E. ESTES
2176
REGISTERED
LAND SURVEYOR

Drawn By:	IMS
Date:	24 Feb. 92
Scale:	1" = 400'
File No.	250 004

KENTON COUNTY AIRPORT BOARD
LEASE FOR DELTA AIR LINES INC.
DONALDSON ROAD, BOONE COUNTY, KENTUCKY

David E. Estes
Engineering, Inc.
CIVIL ENGINEERING AND LAND SURVEYING
1615 DONALDSON ROAD, FLORENCE, KENTUCKY 41042, (606) 525-6570

EXHIBIT "B"

P.C.P.C. File No. 1838

EXHIBIT C TO ORDER

DELTA AIR LINES, INC.
GENERAL OFFICES
HARTSFIELD ATLANTA INTERNATIONAL AIRPORT
ATLANTA, GEORGIA 30320-6001 U.S.A.

February 1, 1992

Star Bank, N.A.
Corporate Trust Services Department
425 Walnut Street
Cincinnati, Ohio 45202

RE: Guaranty - Kenton County Airport Board Special Facilities Revenue Bonds, 1992 Series A and 1992 Series B (Delta Air Lines, Inc. Project) (the "Bonds")

Gentlemen:

In order to induce the Kenton County Airport Board (the "Issuer") to issue the Bonds, and Star Bank, N.A., as trustee for the Bonds (the "Trustee"), to assume its obligations under a Trust Indenture, dated as of February 1, 1992, between the Issuer and the Trustee (the "Indenture"), in consideration of such actions, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Delta Air Lines, Inc. ("Delta") hereby agrees with the Trustee in this Guaranty as follows:

1. Obligations Guaranteed. Delta hereby unconditionally guarantees to the Trustee, for the benefit of the registered owners of the Bonds (the "Bondholders"), to pay the Trustee, all amounts, if any, not paid when due to the Trustee as rental payments pursuant to Section 4.03(a) of the Lease Agreement, dated

as of February 1, 1992, between Delta and the Issuer (the "Lease Agreement"), for any reason whatsoever (including, without limitation, a determination as to the invalidity or unenforceability of the Lease Agreement or a rejection of the Lease Agreement in bankruptcy or otherwise) required for: (a) the full and prompt payment of the principal and premium, if any, on the Bands as the same shall become due as provided in the Indenture, whether at the stated maturity thereof, by redemption or otherwise; and (b) the full and prompt payment of interest on such Bonds when and as the same shall become due as provided in the Indenture. The obligations covered by this Guaranty are intended by the parties to be independent of those set out in the Lease Agreement and to be enforceable without regard to the validity or enforceability of the Lease Agreement or any obligation of Delta contained therein.

2. Delta Representation. Assuming proper authorization, execution and delivery by the Trustee, this Guaranty constitutes the legal, valid and binding obligation of Delta, enforceable against Delta in accordance with its terms, except as the enforceability hereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights and remedies of creditors and by equitable principles, including, but not limited to, judicial discretion in appropriate cases.

3. Events of Default and Enforcement. (a) An "Event of Default" shall exist under this Gua-

ranty if any of the following occurs and is continuing:

(1) Delta defaults is any payment under this Guaranty referred to in Section 1 hereof;

(2) Delta fails to observe and perform any covenant (other than such referred to in Section 1) of this Guaranty and such failure continues for more than sixty (60) days after written notice of such failure has been given to Delta by the Trustee; or

(3) Delta shall file a voluntary petition or institute any proceeding under the United States Bankruptcy Code, either as such Code now exists or under any amendment thereof which hereafter may be enacted, or under any Act or Acts, State or Federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment to such Act or Acts, either as a bankrupt, or as an insolvent, as a debtor, or in any similar capacity, wherein or whereby Delta asks to be adjudicated a bankrupt, or to be discharged from all of Delta's debts or obligations, or asks for reorganization or to effect a plan of reorganization or for a readjustment of Delta's debts or any similar relief; or any involuntary petition in bankruptcy or any other proceedings of the foregoing or a similar kind or character shall be filed or instituted or taken against Delta and shall not be dismissed within ninety (90) days thereof; or a custodian or receiver of Delta or of a substantial portion of the property or assets of Delta shall be appointed by

any court and shall not be dismissed within ninety (90) days thereof; or Delta shall make a general assignment for the benefit of Delta's creditors or Delta shall enter into an agreement of composition with Delta's creditors; or Delta shall admit in writing its inability to pay its debts generally as they become due (each an "Act of Bankruptcy).

(b) Upon an Event of Default hereunder the Trustee shall have the right to proceed against Delta under this Guaranty, provided, however, that the Trustee shall credit against Delta's payment obligations under this Guaranty any and all rental payments pursuant to Section 4.03(a) of the Lease Agreement received and any and all monies and securities held by and available to the Trustee for the purpose of paying the principal of, premium, if any, or interest due on the Bonds under the Indenture. To the extent any Guaranty payments are made hereunder, such payments shall satisfy Delta's obligation to pay those amounts as rental payments pursuant to Section 4.03(a) of the Lease Agreement pursuant to the Lease Agreement.

(c) All monies received by the Trustee pursuant to any right given or action taken under the provisions of this Guaranty shall be deposited by the Trustee in the Bond Fund (as defined in the Indenture) for the benefit of the Bondholders and such moneys shall be applied by the Trustee in accordance with the terms of the Indenture.

(d) The Trustee shall be under no obligation to institute any suit or to take any remedial action under this Guaranty, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the enforcement of any rights and powers under this Guaranty until the Trustee shall have received a written request of the registered owners of at least a majority in aggregate principal amount of the Bonds then outstanding to do so and upon being indemnified by them to its satisfaction against any and all liability (including without limitation, reasonable compensation for services, costs and expenses, outlays, and counsel fees and expenses and other disbursements) not due to its negligence or wilful misconduct,

(e) This Guaranty may be enforced only by the Trustee by such actions, suites, proceedings, at law and in equity, as may be necessary or expedient to preserve and protect its interests and the interest of the Bondholders hereunder.

4. Delta to Maintain Corporate Existence. Except as hereinafter provided in this Section 4, Delta agrees that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and licenses and will not consolidate with or merge into another corporation or other entity. However, Delta is permitted to consolidate with or merge into another corporation or other entity, or to permit one or more other corporations or entities to consolidate with or

merge into Delta, or to sell, convey or otherwise transfer all or substantially all of its property, assets or licenses to another corporation or other entity, but only on the condition that the corporation or entity resulting from or surviving such merger (if other than Delta) or consolidation or the corporation or entity to which such sale, transfer or conveyance is made (i) expressly assumes in writing and agrees to perform all Delta's obligations under this Guaranty, (ii) is qualified to do business in the Commonwealth of Kentucky, and (iii) if such corporation or other entity is not organized and existing under the laws of the United States of America or any State or territory thereof or the District of Columbia, irrevocably consents to service of process in, and the jurisdiction of the courts of, the Commonwealth of Kentucky with respect to any action or suit, in law or in equity, brought by the Trustee to enforce this Guaranty. If Delta is the surviving corporation in such a merger or consolidation the express assumption referred to in clause (i) above is not required.

5. Beneficiaries. This Guaranty shall not be deemed to create any right, or to be in whole or in part for the benefit of any person other than Delta, the Trustee, the Bondholders, and their permitted successors and assigns. This Guaranty is entered into by Delta solely for the benefit of the Trustee, the Bondholders and any successor Trustee or Trustees under the Indenture. The Trustee shall have no right to assign or otherwise dispose of its right, title and interest in or obligations un-

der this Guaranty except to any successor Trustee or Trustees under the Indenture.

6. Amendment. This Guaranty may be amended by Delta and the Trustee only in accordance with the provisions of the Indenture.

7. Entire Agreement Counterparts. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

8. Severability. The invalidity and unenforceability of any one or more of the provisions contained in this Guaranty shall not effect the validity or enforceability of the remaining portions of the Guaranty.

9. Governing Law. This Guaranty shall in all respects be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Nothing contained in this Section shall affect the right of any party to commence any action, suit or proceeding in connection with any controversy or claim arising out of or relating to this Guaranty or any alleged breach hereof in any court of competent jurisdiction.

10. Effective Date Termination. This Guaranty shall be effective as of February 1, 1992 and shall remain in effect until the date the Indenture is discharged and satisfied in accordance with Article VIII thereof.

11. Notices. All notices, certificates or other communications in regard to this Guaranty shall be deemed given when delivered or when mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Delta at:

Delta Air Lines, Inc.
1030 Delta Boulevard
Atlanta, Georgia 30320
Attention: Vice President-Treasurer

with a copy to:

Delta Air Lines, Inc.
Law Department
1030 Delta Boulevard
Atlanta, Georgia 30320
Attention: Senior Vice President-General Counsel

If to the Trustee at:

Star Bank, N.A.
Corporate Trust Services Department
425 Walnut Street
Cincinnati, Ohio 45202

Delta and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Delta has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer. If this Guaranty is acceptable to the Trustee, please have this Guaranty executed by a properly authorized representative of the Trustee.

DELTA AIR LINES, INC.

By: /s/ Frank S. Chew
Title: Vice President-Treasurer

STAR BANK, NA, as Trustee

By: /s/ Nancy V. Kelly
Senior Trust Officer

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed Apr. 23, 2009]

Docket Number: 07-3979-bk

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of April, two thousand and nine,

---

Ad Hoc Committee of Kenton County Bondholders,
Appellant,

v.

Delta Air Lines, Inc., Kenton County Airport Board,
UMB Bank, N.A., as Trustee,
Post Effective Date Committee as successor to the
Official Committee of Unsecured Creditors of
Delta Air Lines Inc.,
Appellees.

Ad Hoc Committee of Kenton County Bondholders having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc,* and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc,*

IT IS HEREBY ORDERED that the petition is denied.

For the Court:

Catherine O'Hagan Wolfe, Clerk

By: /s/ Frank Perez

Frank Perez, Deputy Clerk

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York, N.Y.
M-47 (JGK)

IN RE DELTA AIR LINES INC. *et al.*,
Debtors.

KENTON COUNTY BONDHOLDERS COMMITTEE,
Appellant,

v.

DELTA AIR LINES, INC. *et al.*,
Appellees.

Chapter 11

May 2, 2007
4:15 p.m.

Before: HON. JOHN G. KOELTL, *District Judge*

[83] Decision

THE COURT: Good afternoon, all. All right. I am prepared to decide. I appreciated the briefing and the arguments.

The appellants, a group of Bondholders who hold approximately $50 million in face amount of bonds issued by the Kenton County Airport Board ("KCAB") pursuant to a 1992 Trust Indenture, bring this motion for a stay pending appeal of a settlement order

entered by the United States Bankruptcy Court for this district approving a settlement among Chapter 11 debtor, Delta Airlines, KCAB, and UMB Bank, N.A. as trustee for the Bondholders under the 1992 Indenture. The appellants objected to the proposed bankruptcy court order approving the settlement, but after limited expedited discovery and extensive argument, the Bankruptcy Court entered the settlement order at issue here on April 24, 2007, with a written decision following on April 25, 2007. The appellants immediately filed a notice of appeal and a motion requesting an expedited appeal.

On April 26, 2007, the appellants orally moved the Bankruptcy Court for a stay pending appeal, and the Court denied that motion orally with a formal order denying the motion following on April 27, 2007. The appellants now move this Court by way of an Order to Show Cause why a stay pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8005 should not be issued.

[84] In considering a stay pending appeal of a bankruptcy order, the Court applies a four factor test involving: (1) whether the movant will suffer irreparable injury if the stay is denied (2) whether the non-moving parties will suffer substantial harm if the stay is granted, (3) whether there is a strong likelihood, or alternatively, a substantial possibility of success on the merits of the appeal, and (4) whether a stay is in the public interest. *See In Re Adelphia Communications Corp.*, No. 02-41729 M47, 2007 WL 186796, at *4 (S.D.N.Y. January 24, 2007) (citing *Hirschfeld v. Board of Elections*, 984 F.2d 35, 39, (2d Cir. 1993)); In Re Bogdanovich, 00 Civ. 2266 2000, WL 1708163, at *3 (S.D.N.Y. November 14, 2000). These factors are considered in turn, giving each its

due weight in determining whether the Court's equitable power to issue a stay is warranted.

First, the appellants have failed to show a sufficient likelihood of irreparable harm, though there may be the possibility of some harm if the stay is denied. The appellants argue primarily that a denial of a stay may render their appeal subject to dismissal as equitably moot because Delta could begin making distributions under the terms of the settlement agreement as early as May 3, 2007, and after those distributions the Court would be unable to fashion a remedy should the appeal succeed. However, the appellant stated to the Bankruptcy Court and have repeated in these proceedings [85] that they do not believe their claims against KCAB, the trustee, and any other nondebtors are likely to be dismissed as equitably moot. (See April 26, 2007, Bankruptcy Court Stay Hearing Transcript at 6, attached as Exhibit A to declaration of Andrew Dean, May 1, 2007). Their equitable mootness argument therefore appears to pertain only to their claims against the debtor Delta. However, the appellants have not pressed arguments on the merits, at least in their papers, against Delta on this appeal because they assert in their reply that they "are now not seeking to recover principal and interest on the bonds from the Airport or Delta . . ., but rather to sue for a breach of Sections 9 and 12 of the Indenture by the Airport and the Trustee." (Appellants Reply Memo of Law at 7). Indeed, the appellants suggest as possible relief that this court enter an order staying the provisions of the settlement order that delivers a release to the Airport and the Trustee. (Appellants' Brief at 4.) Moreover, it is worth noting that if the appellants succeeded in their argument that the Bankruptcy Court lacked jurisdiction to enter the settlement order, it is unlikely

that their appeal would be moot. Therefore, the argument that the appellants would be irreparably harmed if the stay is denied because their appeal would be rendered equitably moot is a weak one.

The appellants' argument for irreparable harm is also speculative. *See In Re Bogdanovich*, 2000 WL 1708163 at *6 ("To [86] establish irreparable harm, a party must demonstrate 'an injury that is neither remote nor speculative, but actual and imminent'" (quoting *Tucker Anthony Realty Corp. v. Schlesinger*, 808 F.2d 969, 975 (2d Cir. 1989)). To the extent that the plaintiffs are attempting to argue that the value of their investments has been diminished or harmed in some way or will be harmed during the pendency of the appeal, there is no such showing. If the appellants' appeal succeeded, it would lead to further litigation, but the appellants have not established that this strategy would likely result in a more favorable settlement for them. In fact, the Trustee and the majority of Bondholders who supported the settlement have argued without substantial contradiction that the settlement provides fair and reasonable consideration. The appellants have therefore failed to establish that a denial of the stay would make them worse off economically. In any event, they have made no showing that any loss of economic benefit would be "irreparable."

Second, the parties resisting this motion have made a persuasive showing that they would suffer substantial harm if a stay pending appeal were granted. A stay would deprive the Bondholders of a substantial benefit of the settlement that would allow them to receive a substantial distribution of securities from Delta on May 3, 2007, the same date that other creditors would receive distributions under

Delta's approved reorganization plan. And therefore, to avoid future market [87] risk, Delta and the other parties opposing this motion have argued compellingly that the value of these securities could decrease after the bulk of the distributions to other creditors take place and, therefore, that the Bondholders could lose a substantial portion of their bargained for value under the settlement agreement. In any event, the Bondholders bargained for the right to have their securities and to be able to decide whether to keep them or sell them. Any stay would deprive them of that consideration by holding up the distribution of their securities.

Furthermore, each of the parties to the settlement agreement, who all oppose the stay, maintain that under the settlement agreement each of those parties can terminate the settlement agreement if there is a stay. That is at least a plausible argument under the settlement agreement, and the enormity of that consequence would be irreparable injury.

While the severity of the risk that the settlement could be imperiled by a stay is unclear at this stage, any risk that the settlement could dissolve presents the possibility of a substantial harm because the settling parties agree that the negotiated settlement is in the best interests of both Delta and the Bondholders.

The substantial harm to the Bondholders that would result from their inability to monetize their stake of the distribution immediately and thereby avoid market risk together [88] with a possibility that the settlement itself could fall apart weighs against the grant of a stay.

The appellants raise the possibility of granting less onerous relief by staying only the portion of the order delivering releases of claims against KCAB and the trustee, or by specifically putting KCAB and the trustee "on notice" that their releases are subject to vacatur on appeal regardless of whether the settlement has closed. The first alternative would result in the alteration of a material term of the settlement and would contravene Section 3.01 of the Settlement Agreement, which provides that all provisions of the settlement agreement are essential and nonseverable. Staying only some terms would likely require staying the entire agreement and indeed imperil the carrying out of the Settlement Agreement. The second alternative would amount to an advisory opinion and is plainly inappropriate at this stage. All parties are free to research the law and assess their legal positions. Neither alternative can prevent the risk of substantial harm to the Bondholders and the other settling parties.

Third, having reviewed the Bankruptcy Court's thorough decision approving the settlement agreement, the Court finds that the appellants have failed to establish a likelihood of success on appeal. The appellants' argument that the Bankruptcy Court lacks subject matter jurisdiction to enter the settlement order is undercut by their concession in the [89] Bankruptcy Court's April 19, 2007, hearing on the motion to grant the Settlement Order that the Court had subject matter jurisdiction under 28 U.S.C. Sections 1334(b) and 157 to rule on the motion. The Bankruptcy Court plainly had jurisdiction under Section 1334(b) to approve the settlement binding nondebtors because the settlement had more than a "conceivable effect" on the bankruptcy estate, as required in this circuit; it in fact had a very clear

effect on Delta's obligations. *In Re Cuyahoga Equipment Corp.* 980 F.2d 110, 114 (2d Cir. 1992) (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1994)); *See Also In Re WorldCom Inc. Securities Litigation*, 293 B.R. 308, 319 (S.D.N.Y. 2003). The appellants attempt to ignore the centrality of Delta to the indenture because KCAB is named as the issuer, but the Bankruptcy Court found that the indenture along with the associated Lease Agreement and Guaranty clearly show that the bonds are nonrecourse with respect to KCAB and that Delta's rent obligations provide the only source of payment. (*See, e.g.*, Indenture, Sections 2.05, 7.01, attached as Exhibit G to Dean Declaration; Lease Agreement, Section 4.03, attached as Exhibit H to Dean Declaration.)

As the Bankruptcy Court explained, both KCAB and the Bond Trustee are direct creditors of Delta, KCAB based on the lease and the trustee based on Delta's guarantee of the lease, which is the only source of funding for the bonds. All three [90] of the agreements are inextricably related to each other, and the settlement resolves the claims among the parties arising from Delta's effort to reject the lease in the bankruptcy case.

The appellants argue particularly that the Bankruptcy Court lacked jurisdiction to approve the releases of claims against the nondebtors which are contained in Section 3.02(f) of the settlement agreement. The appellants have failed to establish that this claim is likely to succeed on appeal. The appellants fail to address cases such as *In Re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293, (2d Cir. 1992), which have allowed releases of claims against third parties where those releases played an important part in a debtor's reorganization plan. *See*

Bartel v. Bar Harbor Airways, Inc., 196 B.R. 268, 274 (S.D.N.Y. 1996). The appellants' reliance on *In Re Metromedia Fiber Network Inc.*, 416 F.3d 136 (2d Cir. 2005) is misplaced. Unlike the releases in *Metromedia*, the releases of claims against KCAB, Delta, and the Trustee at issue here are narrowly drawn and are necessary to prevent relitigation of precisely the claims that were negotiated and resolved by the Settlement Agreement. It is furthermore clear that the releases at issue comprise valuable consideration for KCAB and the Trustee in return for their agreement to give up indemnification rights against Delta and therefore the releases. Therefore, the releases are of the kind that *Metromedia* would consider as acceptable. Moreover, the [91] releases are part of the Settlement Agreement that was entered into by the Trustee on behalf of the Bondholders. The Trustee was authorized to settle claims by the majority of the Bondholders pursuant to the terms of the Indenture. Therefore, the releases were consensual releases which were recognized as authorized in *Metromedia*. *See Metromedia*, 416 F.3d at 142.

To the extent that the appellants argue that the so-called nonimpairment provision of the Indenture barred the Bankruptcy Court's actions, its position is unlikely to succeed on appeal. Taking a full view of the Indenture's provisions, it appears likely that the Bankruptcy Court correctly found that the indenture did not bar it from approving the settlement, particularly in view of the agreement by the Trustee at the direction of a majority and principal amount of the Bondholders to enter into the settlement, and the approval of the reorganization plan, which incorporates the settlement agreement by a large majority of the Bondholders.

The Bankruptcy Court was also likely correct in finding that any impairment of the Bondholders' ability to receive payment within the meaning of Section 9.06 of the Indenture was due to Delta's default and protection under the bankruptcy laws, not any act of the Issuer or Trustee.

The Bankruptcy Court was also likely correct that the trustee had the right under Section 9.04 of the Indenture following Delta's default to accept directions from the [92] majority of the Bondholders and that it was authorized to do so on behalf of all Bondholders.

Finally, the public interest factor weighs heavily in favor of denying the stay. It is undisputed that the public interest favors the expedient administration of bankruptcy proceedings. *In Re Savage and Associates*, P.C., 05 Civ. 2072 2005 WL 488643 at *2 (S.D.N.Y. February 28, 2005.) *See Also In Re Metiom Inc.*, 318 B.R. 263, 272 (S.D.N.Y. 2004). The overwhelming number of Bondholders have approved the settlement. There is no dispute that the settlement is in the best interests of Delta. The appellees also argue persuasively that the settlement is in the best economic interests of the Bondholders, and the appellants have avoided making any substantial argument that the settlement is not in the best economic interests of the Bondholders. The appellants stand only on their asserted legal rights to object to the settlement, which rights are unlikely to be recognized. Moreover, the appellants have not provided any compelling support for their argument that this settlement would result in any instability in the financial markets. Rather, the substantial approval of the settlement and the plan reflect the fact that other partici-

pants in the process do not share their evaluation of the settlement.

Furthermore, the equities tip decidedly against the appellants in view of the fact, apparent from their April 25, [93] statement pursuant to Bankruptcy Rule 2019, that the overwhelming number of the appellants' bonds were bought after Delta entered into bankruptcy proceedings. Thus the appellants bought the bonds while they knew the income stream to pay the bonds was imperiled, and they continued to hold the bonds without objection while they were aware that the Trustee was engaged in settlement discussions.

A consideration of all of the factors discussed above, none of which provides considerable support for the appellants' position, leads to the conclusion that a stay pending appeal is unwarranted.

The appellant's motion for a stay pending appeal is, therefore, denied.

So ordered.

To the extent that findings of fact and conclusions of law are required on denying a stay pending appeal, the foregoing constitutes the Court's findings of fact and conclusions of law.

So ordered.

There are two minor things.

I attempted to deal with this as expeditiously as possible so that all of you would have the opportunity to seek other review. I am sure that you can get the transcript from the court reporter. What I would do, I will issue tonight just a brief order that says for the reasons stated on the record [94] the motion for the stay is denied.

Rather than to put you all now through the discussion of the timing of the appeal, I am perfectly prepared to listen to an expedited appeal, and you all had agreed without prejudice to timing of the appeal. Rather than discuss that with you now, would you all simply provide me a stipulation setting out what the timing of the appeal is, and after I get the stipulation I'll set down an appropriate argument date.

OK?

COUNSEL: Thank you, your Honor.

THE COURT: OK. Good afternoon, all. Thank you again for the argument and your briefs.

(Adjourned)

APPENDIX F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11 Case No.: 05-17923 (ASH)
(Jointly Administered)

In re: DELTA AIR LINES, INC., *et al.*,
Debtors.

ORDER DENYING APPLICATION OF OBJECTING BONDHOLDERS FOR STAY PENDING APPEAL OF THIS COURT'S ORDER (I) APPROVING SETTLEMENT AGREEMENT PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019, (II) APPROVING THE REJECTION OF CERTAIN AGREEMENTS UNDER SECTION 365 AND (III) AUTHORIZING THE ENTRY INTO CERTAIN NEW AGREEMENTS UNDER SECTION 363

1. On April 24, 2007, this Court entered an order (the "Settlement Order") approving, *inter alia*, the Settlement Agreement among Delta Air Lines, Inc. ("Delta") and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "Debtors"),[1] the Kenton County

[1] The Debtors are the following entities: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.; Delta Loyalty Management Services, LLC; Delta Technology, LLC; Delta Ventures III, LLC; Epsilon Trading, LLC; Kappa Capital Management, Inc.; and Song, LLC.

Airport Board ("KCAB"), and UMB Bank, N.A., as trustee, (the "Bond Trustee").

2. On April 25, 2007, certain bondholders objecting to the Settlement Agreement (the "Objecting Bondholders") filed a notice of appeal of the Court's Settlement Order.

3. On April 26, 2007 at 8:30 a.m., by agreement of the parties, the Court heard the oral motion of the Objecting Bondholders for a stay pending appeal (the "Stay Motion"). The parties made lengthy oral arguments on the Stay Motion and the Court, on the record, made an oral ruling on the Stay Motion.

4. Accordingly, the Court hereby denies the Stay Motion for the reasons set forth on the record.

IT IS SO ORDERED.

Dated: April 27, 2007
White Plains, New York

/s/ Adlai S. Hardin, Jr.
UNITED STATES BANKRUPTCY JUDGE

TRANSCRIPT OF MOTION FOR STAY
PENDING APPEAL

RE: KCAB/CVG SETTLEMENT

BEFORE THE HONORABLE ADLAI S. HARDIN
UNITED STATES BANKRUPTCY JUDGE

* * * *

[40]THE COURT: Okay. I guess it's time for my ruling, eh? Here's my ruling:

I have no choice but to deny the motion for a stay pending appeal. I'll just touch on some of the points that were covered in the argument by counsel this morning.

On the question of irreparable injury, certainly there is the potential for the mootness argument, without a doubt, but there's also no question that there is a tremendous potential for irreparable injury to the other parties if this settlement cannot and does not close on—what is it, ten o'clock, May 3; is that the time now it's set for?

[41]MR. HUEBNER: That's right, Your Honor.

THE COURT: I won't attempt to reiterate what counsel has articulated better than I, but there can be no question that an important factor in this settlement from the point of view of the bondholders—and I'm now talking about the bondholders as represented by the bond trustee, which acted under the written direction of the unofficial bondholders' committee, comprised of sixty percent in amount of all bondholders; the committee to which all bondholders were welcome to join.

There's no question, there can be no question that a significant, important aspect of this settlement was that the claim which the bondholders would have in

lieu of rent, stretching out over the next fifteen years, would be the kind of recovery that could be monetized now in the form of the eighty-five-million-dollar note, net of payments made under the forbearance agreement, and the issuance of Delta stock, which could be traded now.

It is self-evident and really need not be belabored that the ability to monetize that recovery and trade it now is of critical importance to the bondholders—again, the bondholders who were represented by the bond trustee, which acted at the direction of the unofficial bondholders' committee which all bondholders were invited to join. I'm talking about the bondholders which overwhelmingly voted in favor of the [42] plan; i.e., in favor of this settlement. Because bondholders had no interest in the plan other than this settlement. So both sides face irreparable injury, depending upon the outcome of whether there is a stay, there can be no question about that.

As far as the critical element of likelihood of success on the merits, I do not believe that this is a question of first impression. With regard to the legal arguments, all of which I dealt with in my decision which I issued yesterday, the principal legal issue, as is reflected in my decision, I believe to be the fundamental question of whether or not in a revenue bond issue of this sort the bond trustee can act on behalf of all bondholders in exercising remedies after a default and, in particular, in the context of a bankruptcy to negotiate a resolution which will be binding on all bondholders.

Obviously, it will be up to the District Court, and perhaps the Court of Appeals, to review my views as to the indenture. It was my view, as I expressed it in my decision, that the indenture can only logically be

construed as vesting in the bond trustee the power to act on behalf of all bondholders, subject to written direction of a majority of the bondholder; majority in amount of the bondholders. That phrase, "subject to written direction by a majority in amount of the bondholders," appears several times in Article IX, which [43] is the "Remedies Upon Default" portion of the indenture.

The case law appears to me to be uniform in sustaining the right of—or rights of bond trustees to act on behalf of and in a manner which will bind all bondholders. In the absence of such provisions in a bonded indenture and court decisions that so hold, it would be impossible for a bond trustee ever to reach a settlement, and that is clearly reflected in this case.

And that brings me to the other significant issue that was argued, which is the question of the release. Again, with regard to the merits on the release, the release in this case is narrow and it is tailored solely to secure to the settling parties the settlement that they agreed upon.

I think it would be a decision of first impression to hold that a release such as this, which does no more than preclude a minority from forcing relitigation of that which has been settled between the parties. If a release like this is not sustained, then that ruling would call into question the ability of any parties to settle.

I believe that there is no reasonable likelihood of success on appeal, and that the grounds for granting a stay pending appeal have not been and cannot be shown to exist here.

I want to mention one other thing that Mr. Lauria, in his able presentation, touched upon. He referred to three of the points of litigation—or rather, negotiation,

which were [44] not litigated and were resolved by the settlement:

The cap on the bondholder pre-petition non-priority unsecured claim under Section 365(g), provided under Section 502(b)(6) of the Bankruptcy Code.

A second issue was the re-let question.

A third was the question of whether or not the guaranty, Delta's guaranty to the bond trustee—not to the bondholders, but to the bond trustee—constitutes a separate claim, separate and apart from the obligation to pay rent, which the guaranty guarantees.

I did not express any views on any of those three issues or, indeed, any of the other issues; the principal ones of which I listed, as having been resolved. And I did not express any view as to any of those issues because that's not the function of a court on a 9019 motion. But the fact is that all of those issues were critical to the negotiations, and they were all resolved. And this goes to the question of: Be careful what you ask for because you might get it.

The request, or the effort by these very small minority of bondholders who objected to this settlement seeks to undo a settlement which is, in my view, properly perceived by the vast majority of bondholders to be very much in their interest. If this settlement were lost for any reason and all of these substantive issues—the 502(b)(6) issue, the re-let issue, the guaranty issue—were now to be litigated—and if [45] they were litigated in this court, it would be done in a big hurry, as you all know—then the risk, depending upon the outcome of those issues, would be very great indeed to the vast majority, both in number and amount, of bondholders.

In any event, for all of those reasons, I am going to deny the motion.

Have a good time in the District Court, friends. Thank you for your very able arguments.

MR. HUEBNER: Your Honor, may I ask one question as we all say goodbye?

THE COURT: Yes. Oh, by the way, I will ask Davis Polk to promptly, immediately submit a very, very simple order—which it can be less than a page—that recites the fact of this oral motion for a stay pending appeal, the fact that a hearing was held at 8:30 this morning; and that, after hearing argument on the basis of my ruling I have denied the motion.

MR. HUEBNER: Thank you, Your Honor.

Question No. 1—and I truly, greatly apologize. But I think that on our side, the main reason KCAB and potentially the committee spoke was on the public interest factor, which I think is, for us, one of the most important reasons the stay must be denied. And I was wondering, since I think we all will be in the District Court soon, does the Court have a view on which side presented the more compelling argument on the public interest of the stay?

[46] THE COURT: Well, I absolutely feel that the three settling parties presented the more compelling public interest, by far.

MR. HUEBNER: Thank you, Your Honor.

Then my final question—I greatly apologize; I'm very uncomfortable, but I'm aware that, you know, people are trying to make a record here which will be going upstairs very soon.

I believe you used the phrase "both sides showed irreparable harm," but you also spoke at length about the very, very serious harm to our side. Is it fair to read into your comment that you view the harm on the one side to Delta; KCAB, the governmental entity; the majority of the bondholders; and the creditors' committee as substantially outweighing any potential harm to the manured objectors?

MR. LAURIA: Your Honor, may I be heard for a moment?

THE COURT: You better say your name, because otherwise you will be called "male voice."

MR. LAURIA: I don't want to be called "male voice," although I am a male and have a voice.

THE COURT: I think we just heard male-voice Mr. Huebner. Is that correct?

MR. HUEBNER: It is, Your Honor.

THE COURT: Okay. Go ahead, Mr Lauria.

MR. LAURIA: This is Mr. Lauria. That's correct.

[47] Your Honor, I'm getting a little confused as to what's going on here. The Court has ruled. We get—as everybody knows, we now have a clean shot at the stay in the District Court. It's not a review or appeal from the denial of this Court's stay. And the offer of counsel for the debtors to kind of feed more lines to the Court just seems to be entirely inappropriate.

THE COURT: Well, I think there's some merit to what you say.

Mr. Huebner, I thought my instruction was clear. I don't want your order to be any more than a very simple recitation—

MR. HUEBNER: That is all it will do, Your Honor, I'm fine with that.

THE COURT: The fact—

MR. HUEBNER: As I said, I had two questions—

THE COURT: Excuse me.

MR. HUEBNER:—and I have already asked them both.

THE COURT: Excuse me. A recitation of, number one, the fact that an oral motion, pursuant to agreement of the Court and the parties, was made this morning at 8:30; the Court heard lengthy oral argument from all sides; and, having done so, made a ruling; and, on the basis of that, denied the motion.

I've said what I have said. Frankly, what I've said [48] matters little now because all of these arguments will have to be presented to the District Court, and the District Court will have to consider them all de novo.

MR. HUEBNER: Thank you, Your Honor. We have nothing further. We will, of course, prepare exactly that order.

THE COURT: All right. Anything further?

MR. LAURIA: Thank you, Your Honor.

THE COURT: Thank you all very much.

COUNSEL: Thank you, Your Honor. Thank you, Your Honor. Thank you, Your Honor.

THE COURT: Good day.

MR. HUEBNER: Thank you, Your Honor.

(Proceedings concluded at 9:57 a.m.)

APPENDIX G

U.S. CONST. art. I, § 8, cl. 1. Powers of Congress; Levy of Taxes for Common Defense and General Welfare; Uniformity of Taxation

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

U.S. CONST. art. I, § 8, cl. 4. Naturalization and Bankruptcy

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

U.S. Const. art. III, § 2, Cl. 1. Jurisdiction of Courts

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

11 U.S.C. § 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically,

including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

* * *

11 U.S.C. § 524. Effect of discharge

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if—

(1)(A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case

under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;

(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the

debtor during the course of negotiating an agreement under this subsection, which states that--

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of—

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of

this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

(1) inform the debtor—

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for

relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor; and

(IV) is to use its assets or income to pay claims and demands; and

(ii) subject to subsection (h), the court determines that—

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

(IV) as part of the process of seeking confirmation of such plan—

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

(3)(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to—

(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)(A)(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party's provision of insurance to the debtor or a related party; or

(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

(iii) As used in this subparagraph, the term "related party" means--

(I) a past or present affiliate of the debtor;

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

(bb) a past or present affiliate of the debtor; or

(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with

respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if—

(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

(5) In this subsection, the term "demand" means a demand for payment, present or future, that—

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1)

or of the order of confirmation that relates to the injunction.

(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

(h) Application to existing injunctions—For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a

court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if--

(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

(2) such act is in the ordinary course of business between the creditor and the debtor; and

(3) such act is limited to seeking or obtaining periodic payments associated with a valid security

interest in lieu of pursuit of in rem relief to enforce the lien.

(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms "Amount Reaffirmed" and "Annual Percentage Rate" shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases "Before agreeing to reaffirm a debt, review these important disclosures" and "Summary of Reaffirmation Agreement" may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms "Amount Reaffirmed" and "Annual Percentage Rate" must be used where indicated.

(3) The disclosure statement required under this paragraph shall consist of the following:

(A) The statement: "Part A: Before agreeing to reaffirm a debt, review these important disclosures:";

(B) Under the heading "Summary of Reaffirmation Agreement", the statement: "This Summary is made pursuant to the requirements of the Bankruptcy Code";

(C) The "Amount Reaffirmed", using that term, which shall be—

(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

(D) In conjunction with the disclosure of the "Amount Reaffirmed", the statements—

(i) "The amount of debt you have agreed to reaffirm"; and

(ii) "Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement."

(E) The "Annual Percentage Rate", using that term, which shall be disclosed as—

(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual

percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II); or

(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating "The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower."

(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

(i) by making the statement: "Your first payment in the amount of $___ is due on ___ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.", and stating the amount of the first payment and the due date of that payment in the places provided;

(ii) by making the statement: "Your payment schedule will be:", and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

(I) The following statement: "Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held."

(J)(i) The following additional statements:

"Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these

steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

"1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

"2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

"4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

"5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

"Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

"What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be

permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

"Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court."

(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court."

(4) The form of such agreement required under this paragraph shall consist of the following:

"Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

"Brief description of credit agreement:

"Description of any changes to the credit agreement made as part of this reaffirmation agreement:

"Signature: Date:

"Borrower:

"Co-borrower, if also reaffirming these debts:

"Accepted by creditor:

"Date of creditor acceptance:".

(5) The declaration shall consist of the following:

(A) The following certification:

"Part C: Certification by Debtor's Attorney (If Any).

"I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

"Signature of Debtor's Attorney: Date:".

(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

(6)(A) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"Part D: Debtor's Statement in Support of Reaffirmation Agreement.

"1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $___, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $___, leaving $___ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: ___.

"2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."

(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."

(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

"Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

"I am not represented by an attorney in connection with this reaffirmation agreement.

"I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

"Therefore, I ask the court for an order approving this reaffirmation agreement."

(8) The court order, which may be used to approve such agreement, shall consist of the following:

"Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above."

(l) Notwithstanding any other provision of this title the following shall apply:

(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

(2) A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective.

(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

(m)(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge.

(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.

15 U.S.C. § 77bbb. Necessity for regulation

(a) Practices adversely affecting public

Upon the basis of facts disclosed by the reports of the Securities and Exchange Commission made to the Congress pursuant to section 78jj of this title and otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors in notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, which are offered to the public, are adversely affected—

(1) when the obligor fails to provide a trustee to protect and enforce the rights and to represent the interests of such investors, notwithstanding the fact that (A) individual action by such investors for the purpose of protecting and enforcing their rights is rendered impracticable by reason of the disproportionate expense of taking such action, and (B) concerted action by such investors in their common interest through representatives of their own selection is impeded by reason of the wide dispersion of such investors through many States, and by reason of the fact that information as to the names and addresses of such investors generally is not available to such investors;

(2) when the trustee does not have adequate rights and powers, or adequate duties and responsibilities, in connection with matters relating to the protection and enforcement of the rights of such investors; when, notwithstanding the obstacles to concerted action by such investors, and the general and reasonable assumption by such investors that the trustee is under an affirmative duty to take action for the protection and enforcement of their

rights, trust indentures (A) generally provide that the trustee shall be under no duty to take any such action, even in the event of default, unless it receives notice of default, demand for action, and indemnity, from the holders of substantial percentages of the securities outstanding thereunder, and (B) generally relieve the trustee from liability even for its own negligent action or failure to act;

(3) when the trustee does not have resources commensurate with its responsibilities, or has any relationship to or connection with the obligor or any underwriter of any securities of the obligor, or holds, beneficially or otherwise, any interest in the obligor or any such underwriter, which relationship, connection, or interest involves a material conflict with the interests of such investors;

(4) when the obligor is not obligated to furnish to the trustee under the indenture and to such investors adequate current information as to its financial condition, and as to the performance of its obligations with respect to the securities outstanding under such indenture; or when the communication of such information to such investors is impeded by the fact that information as to the names and addresses of such investors generally is not available to the trustee and to such investors;

(5) when the indenture contains provisions which are misleading or deceptive, or when full and fair disclosure is not made to prospective investors of the effect of important indenture provisions; or

(6) when, by reason of the fact that trust indentures are commonly prepared by the obligor

or underwriter in advance of the public offering of the securities to be issued thereunder, such investors are unable to participate in the preparation thereof, and, by reason of their lack of understanding of the situation, such investors would in any event be unable to procure the correction of the defects enumerated in this subsection.

(b) Declaration of policy

Practices of the character above enumerated have existed to such an extent that, unless regulated, the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means and instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public; and it is hereby declared to be the policy of this subchapter, in accordance with which policy all the provisions of this subchapter shall be interpreted, to meet the problems and eliminate the practices, enumerated in this section, connected with such public offerings.

* * *

15 U.S.C. § 77ppp. Directions and waivers by bondholders; prohibition of impairment of holder's right to payment; record date

(a) Directions and waivers by bondholders

The indenture to be qualified—

(1) shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions authorizing the holders of not less than a majority in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding (A) to direct the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture, or (B) on behalf of the holders of all such indenture securities, to consent to the waiver of any past default and its consequences; or

(2) may contain provisions authorizing the holders of not less than 75 per centum in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding to consent on behalf of the holders of all such indenture securities to the postponement of any interest payment for a period not exceeding three years from its due date.

For the purposes of this subsection and paragraph (3) of subsection (d) of section 77*ooo* of this title, in determining whether the holders of the required principal amount of indenture securities have concurred in any such direction or consent, indenture securities owned by any obligor upon the indenture securities, or by any person directly or indirectly

controlling or controlled by or under direct or indirect common control with any such obligor, shall be disregarded, except that for the purposes of determining whether the indenture trustee shall be protected in relying on any such direction or consent, only indenture securities which such trustee knows are so owned shall be so disregarded.

(b) Prohibition of impairment of holder's right to payment

Notwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except as to a postponement of an interest payment consented to as provided in paragraph (2) of subsection (a) of this section, and except that such indenture may contain provisions limiting or denying the right of any such holder to institute any such suit, if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver, or loss of the lien of such indenture upon any property subject to such lien.

(c) Record date

The obligor upon any indenture qualified under this subchapter may set a record date for purposes of determining the identity of indenture security holders entitled to vote or consent to any action by vote or consent authorized or permitted by subsection

(a) of this section. Unless the indenture provides otherwise, such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of holders furnished to the trustee pursuant to section 77*lll* of this title prior to such solicitation.

* * *

28 U.S.C. § 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

* * *

28 U.S.C. § 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals [1]

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

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[1] So in original.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the dis-

tricts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance speci-

fied in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in[2] pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

* * *

[2] So in original. Probably should read "is".

28 U.S.C. § 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court

of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

* * *

APPENDIX H

SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement") is made and entered into as of March 8, 2007, by and among Delta Air Lines, Inc. (Delta), a Delaware Corporation, on behalf of itself and its chapter 11 estate, Kenton County Airport Board ("KCAB"), a public and governmental body corporate and politic created under the provisions of Chapter 183 of the Kentucky Revised Statutes, and UMB Bank N.A., as trustee under the 1992 Bond Indenture referenced below (the "Bond Trustee") (collectively, the "Parties").

RECITALS

WHEREAS, Delta and KCAB are parties to a Lease Agreement dated as of February 1, 1992 (the "Facilities Agreement"), pursuant to which Delta uses and occupies certain facilities and improvements (the "Facilities") at the Cincinnati/Northern Kentucky International Airport (the "Airport");

WHEREAS, most of the Facilities were constructed with the proceeds of certain tax-exempt special facilities revenue bonds issued by KCAB (the "1992 Bonds," as more fully defined below), which were issued under a certain Trust Indenture (the "1992 Bond Indenture"), dated as of February 1, 1992, as amended or supplemented as of the date hereof, between KCAB and the Bond Trustee, as successor to Star Bank, N.A., as trustee ("Star");

WHEREAS, Delta and the Bond Trustee, as successor to Star, are parties to a Guaranty Agreement dated as of February 1, 1992 (the "Guaranty");

WHEREAS, KCAB and Delta are parties to an Airport Use Agreement (as defined below) and Delta has agreed to assume its obligations under the same;

WHEREAS, on September 14, 2005, Delta and certain of its subsidiaries filed voluntary petitions for relief under chapter 11 of title 11 of United States Code (the "Bankruptcy Cases") with the United Stated Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, on April 28, 2006, Delta filed a motion (the "Rejection Motion") with the Bankruptcy Court to approve, inter alia, its rejection of the Facilities Agreement and certain other agreements listed in Exhibit A hereto (such agreements, together with the Facilities Agreement, the "Rejected Agreements"), and its abandonment of certain property at the Airport (Docket No. 2477);

WHEREAS, Delta, KCAB, the Bond Trustee and certain 1992 Bondholders (as defined below) are parties to a "Forbearance Agreement dated as of July 17, 2006, as amended by agreement on November 29, 2006, December 29, 2006, and by Paragraph 3.02(b)(i) hereof, (the "Forbearance Agreement") pursuant to which KCAB, the Bond Trustee and such Bondholders, as set forth therein, agreed to forbear from enforcing rights and remedies under the 1992 Bond Agreements (as defined below) and Delta, as set forth therein, agreed to forbear from prosecuting the Rejection Motion, to allow the negotiation of a new lease and related documents to proceed without forcing a hearing on the Rejection Motion prior to the conclusion of such negotiations;

WHEREAS, Delta and KCAB have reached agreement on the terms of a New Lease, as defined below; and

WHEREAS, the Parties have reached a settlement and compromise with respect to all claims and controversies against one another and the 1992 Bondholders (as defined below) related to or arising from the Rejection Motion, the 1992 Bond Agreements (as defined below), and the 1992 Bond Facilities (as defined below), all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and the mutual agreements contained herein, the Parties agree as follows:

ARTICLE 1
INCORPORATION OF RECITALS

The recitals set forth above are true and correct and are hereby incorporated herein by this reference.

ARTICLE 2
DEFINITIONS

In this Agreement, the following capitalized terms shall have the meanings assigned to them below or in the preamble or Recitals set forth above (each meaning to be equally applicable to the singular and plural forms of the respective terms so defined):

"1992 Bondholders" means the former, present and future holders of record and of beneficial interests in the 1992 Bonds.

"1992 Bonds" means the $419,000,000 Kenton County Airport Board Special Facilities Revenue Bonds, 1992 Series A (Delta Air Lines, Inc. Project), of which $397,360,000 remains outstanding as of the date hereof, and the $19,000,000 Kenton County

Airport Board Special Facilities Revenue Bonds, 1992 Series B (Delta Air Lines, Inc. Project), of which $16,210,000 remains outstanding as of the date hereof.

"1992 Bond Agreements" means the Facilities Agreement, the 1992 Bonds, the 1992 Bond Indenture, the Guaranty, the Tax Certificate, the Rejected Agreements and all other documents related thereto that were in existence prior to the date of this Agreement.

"1992 Bond Facilities" means the Project Facilities, as defined in the Facilities Agreement.

"1992 M&O Agreement" means that certain Maintenance and Operations Services Agreement between KCAB and Delta dated as of February 1, 1992.

"Airport Use Agreement" means the Lease of Terminal Facilities dated as of November 15, 1971 between KCAB and Delta, as amended by the First Supplement thereto dated as of January 1, 1975, the Second Supplement thereto dated as of December 1, 1980, the Third Supplement thereto dated as of November 1, 1981, the Fourth Supplement thereto dated as of November 15, 1991, the Fifth Supplement thereto dated as of January 1, 1992, and any and all modifications, alterations, amendments, supplements and extensions thereof made hereafter in accordance with the provisions thereof.

"Bankruptcy Claim" has the meaning assigned to it in Section 3.02(d) of this Agreement.

"Bankruptcy Code" means Title 11 of the United States Code.

"Bulk Storage Facilities Lease" shall mean the Bulk Storage Facilities Lease between KCAB and

Delta dated as of the Closing Date, in form and substance substantially in the form attached hereto as Exhibit B.

"Closing" means execution and closing of the Implementing Agreements.

"Closing Date" means the date on which the Closing shall occur, which date shall be as soon as reasonably practicable after the Effective Date of the Plan, but in no event later than the earlier of (i) one (1) business day prior to the Initial Distribution Date, as defined in the Plan or (ii) three (3) business days after the Effective Date, unless Delta, the Bond Trustee and KCAB otherwise agree.

"Delta Note" shall mean the note issued by Delta, having an aggregate principal amount equal to the Delta Note Value on the Issuance Date and bearing fixed interest at the rate of 8% per annum, the basic terms of which are set forth in Section 3.02(c), below, and which in form and substance shall be substantially in the form attached hereto as Exhibit C, and which shall be governed by the New Indenture.

"Delta Note Value" means $85 million less (i) any and all amounts paid by Delta to the Bond Trustee under the Forbearance Agreement during the period from August 1, 2006 through the Issuance Date and (ii) any and all amounts paid by Delta to the Bond Trustee in accordance with Section 3.02(c)(iii) below. The Delta Note Value shall become a fixed amount as of the Issuance Date.

"Effective Date" means the date on which the Plan shall become effective, as set forth in the Plan.

"Final" means, with respect to an order or judgment of the Bankruptcy Court or other court of

competent jurisdiction with respect to subject matter, that such order has not been reversed, stayed, modified, or amended, and that the time to appeal or seek certiorari with respect to such order has expired and no appeal or petition for certiorari has been timely taken, or that in the event that any appeal that has been taken or any petition for certiorari that has been or may be filed with respect to such order, there has not been a stay of such order, or such appeal or petition for certiorari has been withdrawn or dismissed or has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought.

"Implementing Agreements" means those agreements that are necessary to the implementation of this Agreement, and are not inconsistent with the terms of this Agreement or those agreements that serve as part of the settlement consideration (which agreements shall also be considered Implementing Agreements), including the New M&O Agreement, the Bulk Storage Facilities Lease, New Lease, Delta Note, New Indenture, and a Sixth Supplement to the Airport Use Agreement, attached hereto as Exhibit D.

"Issuance Date" shall mean the date the Delta Note is issued, which date shall be the Closing Date, or at Delta' s sole election, a date that shall not be later than fifteen (15) business days after the Closing Date. In the event that, in accordance with the provisions of Section 3.02(c) of this Agreement, the Delta Note is not issued, then the Issuance Date shall be deemed to be the date that is the date on which the Delta Note Value is reduced to $0.00.

"New Indenture" means the indenture governing the Delta Note, which shall be in form and substance

substantially similar to the form attached hereto as Exhibit E.

"New Lease" means the Lease Agreement dated as of the Closing Date and effective as of January 19, 2006, between KCAB and Delta, which shall be in form and substance substantially similar to the form attached hereto as Exhibit F, and any and all modifications, alterations, amendments, supplements and extensions thereof hereafter made in accordance with the provisions thereof.

"New M&O Agreement" means the Maintenance and Operations Services Agreement dated as of the Closing Date and effective as of January 1, 2007 between KCAB and Delta and any and all modifications, alterations, amendments, replacements, supplements and extensions thereof hereafter made in accordance with the provisions thereof, which shall be in form and substance substantially similar to the form attached hereto as Exhibit G.

"Plan" means the Debtors Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code dated February 7, 2007, as it may be amended, to the extent not inconsistent with the terms of this Agreement.

"Rejection Dates" means the rejection dates set forth in Exhibit A hereto on which the Rejected Agreements shall be deemed rejected.

"Released Claims" has the meaning assigned to it in Section 3.02(f) of this Agreement.

"Releasing Parties" has the meaning assigned to it in Section 3.02(f) of this Agreement.

"Settlement Materials" has the meaning assigned in Section 6.01(a)(i) of this Agreement.

"Settlement Motion" means the motion to be filed by Delta pursuant to Bankruptcy Rule 9019 and Bankruptcy Code Sections 363 and 365 for an order authorizing, *inter alia,* entry into this Agreement with KCAB and the Bond Trustee which shall be in form and substance substantially similar to the form attached hereto as Exhibit H.

"Settlement Order" means a Final order entered in the form attached hereto as Exhibit H or in such form as may otherwise be agreed by the Parties.

"Tax Certificate" shall mean the Company's Tax Certificate and Compliance Agreement, dated as of February 27, 1992, executed by Delta with respect to the 1992 Bonds.

ARTICLE 3
SETTLEMENT CONSIDERATION AND COMPROMISE

Section 3.01. *Settlement and Compromise.* Subject to and expressly conditioned upon (i) the entry by the Bankruptcy Court of the Settlement Order approving this Agreement as provided in Article 4, (ii) the confirmation of the Plan, and (iii) the occurrence of the Effective Date, this Agreement settles and resolves all disputes among Delta, KCAB, the Bond Trustee, and the 1992 Bondholders with respect to the Rejection Motion and any causes of action, claims, claim for damages or other relief resulting from, related to, or arising out of (a) the Rejected Agreements, including the rejection thereof, (b) the 1992 Bond Agreements, and (c) the 1992 Bond Facilities, including Delta's prior and continued occupancy thereof. Except as the Parties may otherwise agree, all provisions of this Agreement are essential, non-severable terms of this Agreement and except as the

parties to the agreements that are exhibits hereto may otherwise agree, all provisions of such agreements are essential, non-severable terms of this Agreement.

Section 3.02. *Settlement Consideration.*

(a) New Lease and Certain Implementing Agreements. On the Closing Date, Delta and KCAB shall enter into the New Lease and the other Implementing Agreements to which they are to be a party. Delta agrees that the New Lease is a lease of nonresidential real property as contemplated by Section 365 of the Bankruptcy Code and Delta hereby waives any right or ability it may have to recharacterize the New Lease as a financing in any future bankruptcy case.

(b) Payments Made Prior to the Issuance Date. Prior to the Issuance Date, Delta shall continue to make monthly payments in accordance with the terms of the Forbearance Agreement. KCAB and the Bond Trustee acknowledge and agree that Delta has made all such monthly payments due through the date hereof. It is further agreed that:

(i) The term of the Forbearance Period (as defined in the Forbearance Agreement) shall be extended until the earlier of: (a) the Issuance Date; or (b) the termination of this Agreement as set forth in Section 4.05 hereof.

(ii) All payments made by Delta under the Forbearance Agreement prior to the Issuance Date shall be in full satisfaction of Deltas payment obligations under the Forbearance Agreement, and the Parties hereto agree not to terminate the Forbearance Period so long as Delta continues to make payments in accordance with

the terms of the Forbearance Agreement. All payments made under the Forbearance Agreement shall not be subject to offset, recoupment, deduction, counterclaim or objection, of any kind or nature, by any party. In the event the Settlement Motion is denied and the Settlement Order is not entered, if the Forbearance Period is terminated by any party thereto, then Delta shall be entitled to the benefit of the cure provisions set forth in Paragraph 5 of the Forbearance Agreement.

(iii) The Parties agree that immediately upon the Issuance Date the Forbearance Agreement shall be deemed terminated and no longer of any force or effect.

(c) *Delta Note.* On the Closing Date, Delta and the Bond Trustee, as trustee under the New Indenture, shall execute the New Indenture and the other Implementing Agreements to which they are to be a party. Delta shall have the option, at its sole discretion, to delay the issuance of the Delta Note for up to fifteen (15) business days after the Closing Date.[1]

(i) The Delta Note, unless the Delta Note Value is reduced to $0.00 prior thereto, shall be issued in the principal amount equal to the Delta Note Value on the Issuance Date, shall be paya-

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[1] The Delta Note and the payments of amounts under Section 3.02(c)(iii) of this Agreement are provided in consideration of (i) the consent to certain relief sought in the Rejection Motion as modified by the terms of this Agreement, and (ii) the release of all claims with respect to Delta s post-rejection occupancy of the 1992 Bond Facilities, including any purported rights to receive relet proceeds.

ble in equal monthly installments, with the last installment being due on December 1, 2015. The terms and conditions of the Delta Note shall be as set forth in the Delta Note and the New Indenture.

(ii) The Delta Note, unless the Delta Note Value is reduced to $0.00, shall be issued under, and in accordance with, the Plan. Pursuant to 11 U. S. C. §§ 1145 and 1146, the Delta Note shall qualify for exemption from any Federal or State law requiring registration for offer or sale of a security and shall be exempt from any stamp or similar tax.

(iii) From and after the Closing Date and prior to the issuance of the Delta Note, Delta shall have the option to pay, in whole or in part, the Delta Note Value on the date of such payment in cash to the Bond Trustee. If Delta makes one or more such cash payments during such 15 business day period, the Delta Note Value shall be deemed to ratably decrease and, notwithstanding anything to the contrary in this Agreement or in the Implementing Agreements, Delta's obligation to issue the Delta Note shall be in the principal amount of the then applicable Delta Note Value after giving effect to such cash payment(s). If, following such cash payments, the Delta Note Value is reduced to $0.00, then, notwithstanding anything to the contrary contained in this Agreement or in the Implementing Agreements, Delta shall have no obligation to issue the Delta Note and the Delta Note and the New Indenture shall become automatically null and void.

(d) *Bankruptcy Claim*. Upon Closing, but effective as of the Effective Date, the Bond Trustee, as

trustee and on behalf of all of the 1992 Bondholders, shall have an allowed pre-petition, non-priority, unsecured claim against Delta in its Bankruptcy Case in the amount of $260,000,000, not subject to offset, recoupment, deduction, counterclaim or objection, of any kind or nature, by any party (the "Bankruptcy Claim"), which allowed Bankruptcy Claim shall be treated at least as favorably as any unsecured claim in Delta Class 4 under the Plan. Except as set forth in the immediately preceding sentence and except with respect to the Delta Note and the Bond Trustee s rights set forth in this Agreement and the Implementing Agreements to which the Bond Trustee is a party, the Bond Trustee, as trustee, and the 1992 Bondholders, shall not have any other claim in the Bankruptcy Cases with regard to the 1992 Bond Agreements whatsoever, including without limitation any bankruptcy or other claim of any type or amount with respect to the 1992 Bond Agreements or under any other agreement or law with respect to the 1992 Bonds or 1992 Bond Facilities, except as set forth in this Agreement. Notwithstanding anything to the contrary in the Plan, the appropriate initial distribution under the Plan with respect to the Bankruptcy Claim shall be made to the Bond Trustee, after or at Closing, on the Initial Distribution Date, as defined in the Plan.

(e) *Full Satisfaction.* The Delta Note, together with the Bankruptcy Claim and the other consideration provided in this Agreement shall be deemed to fully satisfy any and all past, present, and/or future obligations or liabilities of Delta to the Bond Trustee and/or the 1992 Bondholders with respect to the 1992 Bond Agreements and

Delta s continued use and/or occupancy of all, or any part of, the 1992 Bond Facilities.

(f) *Releases*. Effective as of the Closing, each of Delta, KCAB, the Bond Trustee, and each 1992 Bondholder shall, as set forth in the Settlement Order, be deemed, on behalf of itself, and each of its present and former parents, subsidiaries, affiliates, divisions, successors, transferee's, partners, principals, officers, directors, employees, agents, attorney's, and assigns (collectively, the "Releasing Parties"), to have forever released, discharged, waived and abandoned any and all claims, whether direct or representative, (including, but not limited to, any claim for indemnification and any avoidance or preference action brought by or on behalf of Delta or its creditors), rights, demands, suits, matters, liens, mortgages, security interests, pledges, encumbrances, privileges, priorities, issues or causes of action, whether known or unknown, whether based on federal, state, local statutory or common law, rule or regulation, by contract or in equity, and whether directly, representatively or in any other capacity, that it may have, as of the Closing Date, against one or the other, or their respective properties or assets, arising from, in any way based upon or in any way related to the following: the negotiation of or entry into this Agreement and/or the Implementing Agreements; the 1992 Bond Agreements; the 1992 Bond Facilities; any payments received from Delta under the 1992 Bond Agreements prior to the Bankruptcy; and/or the Forbearance Agreement, but excluding any claims brought under or to enforce the terms of this Agreement, the New Lease, the New Indenture, the Delta Note, the other Implementing Agreements or any indemnification claim of the

Bond Trustee against any 1992 Bondholder (collectively, the "Released Claims").

(g) *Rejection Motion and Rejected Agreements.* The objections of the Bond Trustee and KCAB to the Rejection Motion shall be deemed withdrawn and the Rejection Motion shall be approved by the Bankruptcy Court as set forth in Section 4.02 below. Further, the parties agree that the Rejected Agreements and any other 1992 Bond Agreement, with the exception of the 1992 Bond Indenture, shall be deemed automatically terminated and cancelled by the parties thereto as of the Closing Date.

(h) *The 1992 Bond Indenture.* Notwithstanding the foregoing or anything else in this Agreement or the Plan to the contrary, the 1992 Bond Indenture shall continue in effect solely for the purposes of: (a) allowing the Bond Trustee to apply funds and make distributions as provided for in the 1992 Bond Indenture with respect to distributions relating to the consideration provided under this Agreement related to the Bankruptcy Claim, prepayment of all or part of the Delta Note obligation, funds held by the Bond Trustee under the 1992 Bond Indenture, and to perform such other necessary administrative functions with respect thereto, (b) permitting the Bond Trustee to maintain and assert any right to any charging liens it may have against the trust corpus, as such trust corpus may be limited by the terms of this Agreement, for its fees, costs, expenses (including, without limitation, attorneys fees) and indemnification under the 1992 Bond Indenture; and (c) continuing in effect the provisions therein that provide protection to the Bond Trustee with respect to the 1992 Bondholders; provided that this provision (c) shall not be

construed as providing for the survival of any claim against Delta or KCAB that is released pursuant to this Agreement. Except as set forth in this subparagraph (h) (and in all events as to both Delta and KCAB), the 1992 Bond Indenture shall be deemed terminated and cancelled as of the Closing Date.

(i) *The Guaranty and Tax Certificate.* It is agreed among the Parties that the Guaranty and Tax Certificate are pre-petition obligations of Delta that, as such, shall be fully discharged and terminated upon the Closing in connection with Delta's exit from bankruptcy. Upon the Closing, neither KCAB, the Bond Trustee nor the 1992 Bondholders shall be allowed any claim in the Bankruptcy Cases with respect to the Guaranty or the Tax Certificate, except as set forth in this Agreement.

(j) *Fees.* Within 30 days of the date on which Delta receives invoices for actual fees, costs and expenses (provided that the Settlement Order has been entered by the Bankruptcy Court), Delta shall reimburse the Bond Trustee an amount equal to the actual and reasonable fees and expenses of the Bond Trustee, as trustee for the 1992 Bonds, including the fees and expenses of the Bond Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Wyatt, Tarrant & Combs, LLP, Kaye Scholer LLP and SH&E International Air Transport Consultancy, incurred in connection with the 1992 Bonds, the settlement contemplated in this Agreement, and the Bankruptcy Cases, provided that such reimbursement, in the aggregate, shall not exceed $2,000,000.

(k) *Assumption of Airport Use Agreement.* As of the Closing Date, Delta will be deemed to have assumed the Airport Use Agreement, including

prepetition and postpetition obligations pursuant thereto, and shall make a payment of $52,321.12 in satisfaction of prepetition amounts owed under such agreement.

ARTICLE 4
SETTLEMENT ORDER

Section 4.01. *Contingency*. With the exception of the obligations set forth in Sections 3.02(b) and 4.03, which shall be immediately binding upon the Parties' execution of this Agreement, the effectiveness of this Agreement shall be conditioned upon the entry by the Bankruptcy Court having jurisdiction over the Bankruptcy Cases of the Settlement Order, and the Settlement Order becoming Final.

Section 4.02. *Settlement Order Findings*. Unless otherwise agreed in writing by the Parties, the Settlement Order shall, at a minimum, approve of the terms of this Agreement and the consideration therefor set forth in Section 3.02 above, and shall contain, in substance, the following findings and/or orders:

(a) The manner in which notice of the Settlement Motion was provided to all parties entitled to such notice, including the 1992 Bondholders, is adequate, appropriate, reasonable and sufficient for all purposes and is approved;

(b) Notice of the Settlement Motion and proposed Settlement Order was issued at least thirty (30) days prior to the objection deadline for the Settlement Motion as provided for in this Agreement, and the Settlement Order is and shall be binding on Delta, KCAB, the Bond Trustee, and any and all predecessors or successors thereto, and the 1992 Bondholders;

(c) The Settlement Order and the Settlement Agreement incorporated therein is and shall be binding on Delta, KCAB, the Bond Trustee and the 1992 Bondholders, and each of their predecessors or successors.

(d) The execution and delivery of this Agreement by the Parties and the settlement and compromises set forth in this Agreement are approved;

(e) Each of Parties hereto is directed and authorized to enter into each of the Implementing Agreements to which it is a party;

(f) As of the Closing Date, the Rejected Agreements shall be deemed rejected as of the Rejection Dates and the parties to each of the respective Rejected Agreements and other 1992 Bond Agreements agree that such agreements shall be deemed automatically terminated and cancelled as of the Closing Date, with the exception of the 1992 Trust Indenture;

(g) The 1992 Trust Indenture shall remain in effect solely as set forth in Section 3.02(h) hereof;

(h) The Guaranty and Tax Certificate are prepetition obligations of Delta that, as such, upon the Closing shall be fully discharged and terminated in connection with Delta s exit from bankruptcy. Neither KCAB, the Bond Trustee nor the 1992 Bondholders shall be allowed any claim in the Bankruptcy Cases, other than the Bankruptcy Claim, with respect to the Guaranty or the Tax Certificate;

(i) The Bond Trustee, as trustee and on behalf of the 1992 Bondholders, shall have, upon Closing, but effective as of the Effective Date, an allowed

claim in the Bankruptcy Case, as set forth in Section 3.02(d) above;

(j) Delta is authorized to pay fees consistent with the provisions of Section 3.02(j) above;

(k) Delta is authorized to issue the Delta Note pursuant to the Plan. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of the Delta Note is exempt from registration under the Securities Act. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of the Delta Notes shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, FAA filing or recording fee or other similar tax or governmental assessment in the United States.

(l) The compromises and settlement set forth in this Agreement are fair and reasonable to, and are in the best interest of, Delta and its creditors, KCAB, the Bond Trustee, and the 1992 Bondholders, and that, in entering into this Agreement, Delta, KCAB the Bond Trustee and those 1992 Bondholders irrevocably directing the Bond Trustee to enter into this Agreement have exercised their rights and powers, and used the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances;

(m) The mutual releases contained in this Agreement shall be effective as of the Closing;

(n) The Settlement Order shall be binding on the Bond Trustee solely in its capacity as a trustee with respect to the 1992 Bonds, and not in any other capacity, including, but not limited to, its

capacity as a holder of any claim against Delta and/or its affiliates unrelated to the 1992 Bond Agreements or as the trustee with respect to any other bonds related to Delta and/or its affiliates;

(o) The Settlement Order shall be binding on each 1992 Bondholder solely in such bondholder s capacity as a 1992 Bondholder, and not in any other capacity, including, but not limited to, its capacity as the holder of any other claim against Delta and/or its affiliates unrelated to the 1992 Bond Agreements or the holder of any bond other than the 1992 Bonds related to Delta or its affiliates;

(p) The Bond Trustee shall be entitled in its sole discretion to establish one or more record dates for the 1992 Bondholders for the purpose distributions on the 1992 Bonds including distributions on the Bankruptcy Claim; and

(q) Upon the Closing, each of the Releasing Parties shall be deemed to have released and to be permanently enjoined from asserting, pursuing or prosecuting in any manner and in any forum any and all Released Claims against any of the Releasing Parties, including, but not limited to, claims arising from the negotiation of or entry into this Agreement and/or the Implementing Agreements.

Section 4.03. *Support for Settlement.* From and after the date of the execution of this Agreement, (i) each of Delta, the Bond Trustee and KCAB shall support the settlement and compromise as set forth in this Agreement and (ii) KCAB and the Bond Trustee based on their own judgment, the advice of their professionals and, with respect to the Bond

Trustee, the irrevocable direction of a majority of the 1992 Bondholders, shall recommend acceptance of the settlement and compromise set forth in this Agreement, including to the 1992 Bondholders and the Bankruptcy Court, as a reasonable compromise and resolution of the Rejection Motion and all claims and matters related to the 1992 Bond Agreements and Delta s continued use and/or occupancy of all, or any part of, the 1992 Bond Facilities (such recommendations may, in the sole discretion of the Bond Trustee, include references to any directions received prior to the date hereof from any of the 1992 Bondholders). It shall be the obligation of the Bond Trustee and Delta to provide notice of the Settlement Motion to the Bondholders in the manner set forth in Section 6.01.

Section 4.04. *Plan of Reorganization.* The Plan, as filed and when coupled with the Settlement Order, is acceptable to the Parties and shall be deemed to incorporate this Agreement. Delta agrees that it shall not propose or support any amendment to the Plan that eliminates, amends or alters in any way this Agreement and/or the Settlement Order.

Section 4.05 *Denial of Settlement Motion.* If the Bankruptcy Court shall (i) deny the Settlement Motion or refuse to enter the Settlement Order in a form acceptable to the Parties, or (ii) if the Settlement Order fails to become Final by July 15, 2007, or is reversed or modified on appeal, then any of the Parties may terminate this Agreement by providing three (3) business days written notice of termination to the other Parties and without need for further action, whereupon this Agreement shall be null and void and all Parties shall be released of their obligations hereunder and shall be returned to their

respective legal positions as of the time immediately prior to execution of this Agreement except to the extent expressly provided for in Section 3.02(b). Provided that the Parties have used good faith efforts to seek the entry of such Settlement Order and to support it on appeal, if any, then no Party shall have any liability to any other Party, and shall be deemed to have waived the right to assert any claim on account of the inability to obtain the entry of such Settlement Order.

ARTICLE 5
CLOSING

The Closing shall occur on the Closing Date.

ARTICLE 6
ADDITIONAL PROVISIONS

Section 6.01. *Bondholder Notice*. (a) The Bond Trustee agrees to and shall provide notice to the 1992 Bondholders at least thirty (30) days prior to the objection deadline for the Settlement Motion, with the exception of publication notice, which shall be made in accordance with subsection (ii) below, in the following manner:

(i) Mailing by U.S. Mail, postage prepaid, or sending by electronic mail to each 1992 Bondholder that has provided such contact information to the Bond Trustee of a package including copies of the Bond Trustee s notice to Bondholders, in the form attached hereto as Exhibit I, this Agreement (without Exhibits), the Settlement Motion and the proposed Settlement Order with the deadlines for objections to the Settlement Motion and a notice that the Exhibits to this Agreement (such exhibits, together with the Settlement Motion and proposed Settlement Or-

der, the "Settlement Materials") will be posted on the website of the Bond Trustee related to the 1992 Bonds prominently displayed in the notice; and

(ii) publication of a notice to 1992 Bondholders, in the form attached hereto as Exhibit J, in the following publications on or about March 16, 2007:

Publications

Wall Street Journal, National Edition
Cincinnati Enquirer

(iii) posting of the notice to 1992 Bondholders, attached as Exhibit H, on the website of the Bond Trustee related to the 1992 Bonds, together with copies of the Settlement Materials; and

(iv) mail by U.S. Mail or other appropriate means to the following Nationally Recognized Municipal Securities Information Repositories ("NRMSIR"):

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, NJ 08558
Phone: (609) 279-3225
Fax: (609) 279-5962

DPC Data Inc.
One Executive Drive
Fort Lee, NJ 07024
Phone: (201) 346-0701
Fax: (201) 947-0107

Standard & Poor's Securities Evaluations, Inc
55 Water Street
45th Floor
New York, NY 10041
Phone: (212) 438-4595
Fax: (212) 438-3975

FT Interactive Data
Attn: NRMSIR
100 William Street,
15th Floor
New York, NY 10038
Phone: (212) 771-6999
Fax: (212) 771-7390

(b) Delta agrees to and shall:

(i) serve notice of the Settlement Motion in accordance with the Case Management Order;

(ii) deliver by U.S. Mail the Settlement Materials to record holders of the 1992 Bonds including, without limitation, brokers, dealers, banks and other agents or nominees (collectively, the "Nominees") together with instructions to the Nominees to forward the Settlement Materials to the beneficial holders of the 1992 Bonds within three (3) business days of the filing of the Settlement Motion and agreeing that Delta will reimburse the Nominees for the Nominees reasonable and customary out-of-pocket expenses associated with the distribution of the Settlement Materials;

(iii) post the Settlement Materials on the Delta Air Lines, Inc. Restructuring Information website, available at http://www.deltadocket.com; and

(iv) file a report on Form 8-K with the Securities and Exchange Commission, which report shall indicate that the Settlement Materials are available at http://www.deltadocket.com, at least thirty (30) days prior to the objection deadline for the Settlement Motion.

Section 6.02. *Representations.* (a) The Bond Trustee represents and warrants as of the Closing Date that it has been duly and irrevocably authorized to execute and deliver this Agreement and the other agreements contemplated by this Agreement to which it is or will be a party, that the Bond Trustee has been directed by a majority in aggregate principal amount of the 1992 Bonds to enter into this Agreement and the other agreements contemplated

by this Agreement to which it is or will be a party, and that, assuming proper authorization, execution and delivery by the designated counterparties to such agreements, that based upon entry of the Settlement Order and the provisions thereof as contemplated herein, this Agreement constitutes, and the other agreements contemplated by this Agreement to which it is or will be a party will constitute, the legal, valid and binding obligation of the Bond Trustee, enforceable against the Bond Trustee in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights and remedies of creditors and by equitable principles, including, but not limited to, judicial discretion in appropriate cases. The Bond Trustee further represents and warrants that, as of the date hereof and the Closing Date, it is (in its capacity as the Bond Trustee) the lawful owner of all right, title and interest in and to all of the claims and other interests contemplated to be released by it pursuant to this Agreement. It has not assigned, transferred or otherwise disposed of any such claim or interest or portion thereof that it has or ever had, to any person in any manner, including by way of operation of law or otherwise.

(b) KCAB represents and warrants as of the Closing Date that it has been duly authorized to execute and deliver this Agreement and the other agreements contemplated by this Agreement to which it is or will be a party, and, assuming proper authorization, execution and delivery by the designated counterparties to such agreements, and based upon entry of the Settlement Order and the provisions thereof as contemplated herein, this Agreement shall constitute, and the other agreements contemplated by this Agree-

ment to which it is or shall be a party shall constitute, the legal, valid and binding obligation of KCAB, enforceable against KCAB in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights and remedies of creditors and by equitable principles, including, but not limited to, judicial discretion in appropriate cases. KCAB further represents and warrants that, as of the date hereof and the Closing Date, it is the sole and lawful owner of all right, title and interest in and to all of the claims and other interests contemplated to be released by it pursuant to this Agreement. It has not assigned, transferred or otherwise disposed of any such claim or interest or portion thereof that it has or ever had, to any person, including any of its affiliates, in any manner, including by way of operation of law or otherwise.

(c) Delta represents and warrants as of the Closing Date to the Bond Trustee and KCAB that it has been duly authorized to execute this Agreement and the other agreements contemplated by this Agreement to which it is or will be a party, and, assuming proper authorization, execution and delivery by the designated counterparties to such agreements, and based upon entry of the Settlement Order and the provisions thereof as contemplated herein, this Agreement constitutes, and the other agreements contemplated by this Agreement to which it is or will be a party will constitute, the legal, valid and binding obligation of Delta, enforceable against Delta in accordance with its terms except as the enforceability thereof may be limited, in proceedings other than the present Bankruptcy Cases, by applicable bankruptcy, insolvency, reorganization, moratorium or other laws af-

fecting the rights and remedies of creditors and by equitable principles, including, but not limited to, judicial discretion in appropriate cases. Delta further represents and warrants to the Bond Trustee and KCAB that it is the sole and lawful owner of all right, title and interest in and to all of the claims contemplated to be released by it pursuant to this Agreement. It has not assigned, transferred or otherwise disposed of any such claim or interest or portion thereof that it has or ever had, to any person in any manner, including by way of operation of law or otherwise.

ARTICLE 7
MISCELLANEOUS

Section 7.01. *Notices.* All notices and other communications under this Agreement, excluding any notice required under Section 6.01 of this Agreement, which shall be given as set forth therein, shall be deemed duly given (a) when delivered personally or by prepaid overnight courier, with a record of receipt, (b) when received, if mailed by certified mail, return receipt requested, or (c) the day of transmission, if sent by facsimile to the following facsimile numbers during regular business hours or the day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the Parties at the following addresses or facsimile numbers (or to such other address or facsimile number as a Party may have specified by notice given to the other Parties pursuant to this provision):

In the case of Delta:

Delta Air Lines, Inc.
Admin. Bldg.—Law Department 981
1030 Delta Boulevard
Atlanta, GA 30354-1989
Attention: Joe Zang
Fax: 404-715-2233

Delta Air Lines, Inc.
Admin. Bldg.—Department 877
1030 Delta Boulevard
Atlanta, GA 30354-1989
Attention: Jay Turney
Fax: 404-714-9335

With a copy to:

Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
Attention: James I. McClammy
Fax: 212-450-3800

In the case of KCAB:

Kenton County Airport Board
P.O. Box 752000
Cincinnati, OH 45275-2000
Attention: Sheila R. Hammons,
Secretary/Treasurer
Fax: 859-767-3269

With a copy to:

Ziegler & Schneider, P.S.C.
541 Buttermilk Pike, Suite 500
Covington, KY 41017-5710
Attention: Wilbert L. Ziegler
Fax: 859-426-1350

In the case of the Bond Trustee:

UMB Bank, N.A.
Corporate Trust Division
2401 Grand Boulevard
Kansas City, MO 64108
Attention: Anthony Hawkins
Fax: 816-860-3029

With a copy to:

Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston MA 02111
Attention: William W. Kannel
Daniel S. Bleck
Fax: 617-542-2241

Section 7.02. *No Consequential or Punitive Damages.* The Parties shall only be liable hereunder for direct or compensatory damages. No Party (or its affiliates) shall, under any circumstance, be liable to any other Party (or its affiliates) for any indirect, consequential, exemplary, special, incidental, punitive or moral damages or lost revenue, lost income, lost profits, cost of capital or loss of business reputation or opportunity claimed by such other Party under the terms of or due to any breach of this Agreement.

Section 7.03. *Further Assurances.* Each of the Parties hereto agrees to promptly execute such additional documents or instruments–to the extent such additional documents or instruments do not conflict with or are not inconsistent with the terms of this Agreement, the New Lease, the New M&O Agreement, the Bulk Storage Facilities Lease, the Delta Note or the New Indenture–as are necessary or desir-

able to evidence the settlements, releases and other transactions set forth in this Agreement. From time to time, as and when requested by a party hereto, any other party hereto shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other action (subject to any limitations set forth in this Agreement), as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting party.

Section 7.04. *Disputes*. As of the Closing Date, except as otherwise provided in this Agreement, each Party agrees that it shall not commence or proceed with any litigation against any other Party related to the subject matter of this Agreement, the 1992 Bond Facilities, the 1992 Bonds, or the 1992 Bond Agreements nor shall it take any action inconsistent with the terms of this Agreement. The Parties hereto agree that the jurisdiction of Bankruptcy Court shall be concurrent with the jurisdiction of such other courts as shall have jurisdiction to hear claims arising from the enforcement of this Agreement, the other agreements contemplated herein, and the Settlement Order.

Section 7.05. *No Concessions or Admissions*. It is expressly understood that no party to this Agreement concedes any liability of any kind whatsoever and that this settlement is made as a compromise and voluntary agreement in order to dispose of matters of contention and possible contention between the Parties hereto. All negotiations, proceedings, agreements, documents and statements made in connection with this Agreement shall not be deemed or

construed to be evidence or an admission by any party of any act, matter or proposition and shall not be used in any manner or for any purpose in any action or proceeding.

Section 7.06. *No Inducement; Construction*. Each of the Parties hereby states to the others that except as expressly set forth herein, no one has made any representations of any kind to induce them to enter into this Agreement, and that it was entered into freely because they believed it to be in their best interests. This Agreement shall be deemed drafted by all Parties hereto and any ambiguity herein shall not be construed against any party solely by virtue of its participation in the drafting process. Each of the Parties has had advice of counsel of its own choosing in connection with this Agreement.

Section 7.07. *Amendment*. No variation or amendment of this Agreement shall be valid unless it is in writing and signed by or on behalf of all Parties to this Agreement.

Section 7.08. *Waivers*. No failure or delay by any party in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or be construed as a waiver or variation of it or preclude its exercise at any subsequent time, and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

Section 7.09. *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

Section 7.10. *Governing Law*. This Agreement shall be interpreted, construed and governed according to the laws of the State of New York without regard to its conflicts of laws rules. The New Lease and the other Implementing Agreements shall be interpreted, construed and governed as set forth in such agreements.

Section 7.11. *Acknowledgments*. The Parties acknowledge that this Agreement is being entered into in good faith, is the product of arm's-length negotiations, and that good and sufficient consideration has been provided for all of the obligations set forth herein.

Section 7.12. *Binding Effect*. This Agreement shall be binding upon the Parties, their successors, assigns, and/or transferees.

Section 7.13. *Specific Performance*. The Parties acknowledge and agree that a breach of the provisions of this Agreement by any Party would cause irreparable damage to the other Parties and that such other Parties would not have an adequate remedy at law for such damage. Therefore, the obligations of the Parties and their respective affiliates set forth in this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies that the Parties may have under this Agreement or otherwise.

Section 7.14. *Acceptance of Facsimile Signatures*. Delivery of an executed signature page of this Agreement by facsimile transmission shall be as

effective as delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers as of the date first written above.

DELTA AIR LINES, INC.

By:_____
Title:

Date: _____, 2007

KENTON COUNTY AIRPORT BOARD

By:_____
Title:

Attested by:_____
Title

Date: _____, 2007

- and -

UMB BANK, N.A.,
as trustee
By: _____
Title:
Date: ___, 2007

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Supreme Court, U.S.
FILED
SEP 25 2009
OFFICE OF THE CLERK

No. 09-104

IN THE

Supreme Court of the United States

AD HOC COMMITTEE OF
KENTON COUNTY BONDHOLDERS,
Petitioners,

v.

DELTA AIR LINES, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In the bankruptcy of Delta Air Lines, Inc. ("Delta"), the Bankruptcy Court approved a settlement (the "Settlement") among Delta, the Kenton County Airport Board ("KCAB"), which leased facilities to Delta, and UMB Bank, N.A., as trustee on behalf of holders of bonds that were paid for with Delta's lease payments. The Settlement, which the Bankruptcy Court approved as fair and equitable to all bondholders, was also incorporated in Delta's plan of reorganization and approved by over 97% in amount of the voting bondholders. Petitioners failed to obtain a stay, and Delta's assets were distributed in accordance with the plan. The lower appellate courts affirmed the approval of the Settlement, both on the merits and because Petitioners' appeal had been mooted by the irreversible distribution of Delta's assets.

Petitioners' contentions that the Bankruptcy Court exercised jurisdiction over matters unrelated to the debtor's estate and that the courts below refused to consider the merits of Petitioners' claims are contrary to the express findings and holdings of the lower courts. Accordingly, the questions actually presented by this case are:

(1) Whether the Bankruptcy Court was prohibited from approving an agreement among Delta and non-debtors that included *consensual* releases among the non-debtors.

(2) Whether the courts below properly denied Petitioners' appeal from the Bankruptcy Court as moot.

(3) Whether the Bankruptcy Court erred in applying settled principles of law to conclude that it had jurisdiction over the agreement among Delta and the non-debtors.

RULE 29.6 STATEMENT

Respondent Delta Air Lines, Inc. has no parent corporation. JP Morgan Investment Management, Inc. (investment advisor of the Pension Benefit Guaranty Corporation), which is a wholly-owned subsidiary of public company J.P. Morgan Chase & Co., is the only publicly held company that owns 10% or more of the stock of Delta Air Lines, Inc.

Respondent Kenton County Airport Board is a governmental agency organized and operating under Chapter 183 of the Kentucky Revised Statutes and therefore exempt from filing a statement under Rule 29.6.

The parent corporation of respondent UMB Bank, N.A., is UMB Financial Corporation, a publicly traded corporation. No publicly held company holds 10% or more of UMB Financial Corporation's stock.

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IN THE

Supreme Court of the United States

No. 09-104

AD HOC COMMITTEE OF
KENTON COUNTY BONDHOLDERS,
Petitioners,

v.

DELTA AIR LINES, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

The Petition advances no valid reason for this Court to review the decision below. There is no conflict in the circuits that could be resolved by this case. Nor does this case present any important or unsettled question of federal law that warrants this Court's consideration. The courts below applied well-settled principles of bankruptcy and contract law in rejecting Petitioners' objection to a settlement that was agreed to on their behalf by their duly authorized agent. The application of those well-settled principles to the facts of this case does not merit review by this Court.

Contrary to Petitioners' claims, this case does *not* present the question whether bankruptcy courts can discharge obligations of non-debtors. In this case, the debtor in bankruptcy—Delta—renegotiated its obligations to respondent KCAB and to the holders of bonds issued by KCAB that were funded and guaranteed by Delta. As part of that renegotiation, KCAB and the bondholders, represented by respondent UMB Bank as indenture trustee for the bonds (the "Trustee"), renegotiated their related obligations among one another. The resulting agreement was submitted for approval to the Bankruptcy Court, as required by the Bankruptcy Code.

Petitioners purchased a small minority of the bonds, in most cases after Delta filed for bankruptcy and the Trustee gave notice that it was negotiating with Delta and KCAB. Petitioners declined offers to participate in the settlement negotiations and instead challenged UMB Bank's authority as indenture trustee to agree on behalf of the bondholders to the new terms, including limited releases of KCAB and UMB Bank. That contention was rejected on the merits by each of the courts below based on the terms of the trust indenture governing the bonds—a case-specific ruling of contract interpretation that Petitioners do not ask this Court to review.

Accordingly, it is settled for purposes of this case that the non-debtors' obligations to one another were modified by a duly authorized consensual agreement. The modification was not imposed by the Bankruptcy Court, but rather was *contractual*. Petitioners all but ignore this fact in trying to portray this case as presenting the question this Court did not reach last Term in *Travelers Indem. Co. v. Bailey*, --- U.S. ---,

129 S. Ct. 2195 (2009)—*i.e.*, whether a bankruptcy court can release a non-debtor from claims by third parties *without* their duly authorized consent. That is not what happened here, and thus that question cannot be resolved by reviewing this case. Petitioners seek to keep this litigation alive in the hopes of extracting some benefit from doing so, but the key question they urge the Court to decide is not even presented here.

Nor is there any reason for this Court to consider the holding below that Petitioners' objection is equitably moot in view of the closing and the distribution of Delta's assets in and after May 2007. *All eleven* circuit courts to consider the issue have approved the concept of equitable mootness (Pet. 18-20 (citing cases)), and Petitioners point to no conflict between the mootness holding below and the decision of any other court. And in any event, this case is a poor vehicle for examining whether an appeal from a bankruptcy court can be denied on equitable grounds, given that (i) both appellate courts below also affirmed the Bankruptcy Court's decision on the merits, as an alternative holding; and (ii) by the time Petitioners' appeal was decided by the District Court, Delta's estate had been distributed, and that distribution could not be reversed. To the extent that the doctrine of equitable mootness holds any interest, this Court should address it in a case where there is no decision on the merits and where some remedy might be practicable.

Finally, the Petition supplies no reason for this Court to take up the case-specific question whether the renegotiated arrangements among Delta, KCAB and the Trustee fell within the subject matter juris-

diction of the Bankruptcy Court. That jurisdiction encompasses claims "arising under title 11" and "arising in or related to cases under title 11." 28 U.S.C. § 1334(b). The courts below applied settled principles of bankruptcy law in deciding, based on the multiple "inextricably interrelated" agreements between Delta, KCAB and the Trustee, that the Bankruptcy Court had jurisdiction over the Settlement. Petitioners do not contend that this ruling conflicts with any decision of any other court. Nor does the Petition show that any purpose would be served by this Court's reexamination of that case-specific holding.

STATEMENT

1. In 1992, Delta entered into a Lease Agreement with KCAB for use of facilities to be constructed at the Cincinnati/Northern Kentucky Airport (the "Lease"). Pet. App. 320a-421a. To fund the construction, KCAB issued *non-recourse* revenue bonds, which were governed by a trust indenture between KCAB and the Trustee (the "Indenture"). *Id.* 67a-319a. The Indenture provided that payments on the bonds would be funded by Delta's rent under the Lease, and the Lease required Delta to pay the Trustee directly, who would distribute the funds to the holders of the bonds (the "Bondholders"). *Id.* Delta also guaranteed payment on bonds in a separate agreement with the Trustee (the "Guaranty"). *Id.* 422a-30a.

2. In 2005, Delta filed for bankruptcy. It advised KCAB and the Trustee that it intended to reject the Lease under section 365(a) of the Bankruptcy Code, which permits debtors to reject certain contracts

upon approval by the bankruptcy court. Delta, KCAB and the Trustee began negotiations, with the Trustee acting at the direction of a majority of the Bondholders, as provided in the Indenture.

The parties reached a global agreement in February 2007. The Settlement cancelled the Lease and the bonds. *Id.* 41a-42a. Delta and KCAB agreed to a new lease. *Id.* 42a. The Bondholders received notes from Delta and a substantial unsecured claim, which entitled them to vote on Delta's plan of reorganization and to share in the distribution of Delta's estate. *Id.* The Settlement included narrow, limited mutual releases among Delta, KCAB, the Trustee and the Bondholders with respect to the matters addressed in the Settlement and the agreements relating to the bonds. *Id.* 42a-43a. As an agreement that rejected the debtor's lease and disposed of property of the estate, the Settlement was required to be approved by the Bankruptcy Court. 11 U.S.C. §§ 363, 365(a).

3. Petitioners held a small minority of the bonds, almost all of which were purchased *after* Delta was in chapter 11, and in most cases, after the Trustee gave notice that it was negotiating a settlement. Petitioners declined invitations to participate in those negotiations. They objected to the Settlement on the grounds that the Trustee lacked authority under the Indenture to bind the Bondholders and that the Bankruptcy Court lacked subject matter jurisdiction to approve the terms of the Settlement that released KCAB and the Trustee from claims by the Bondholders. Pet. App. 34a. Petitioners did not argue that the Settlement was unfair. *Id.*

The Bankruptcy Court rejected Petitioners' objections and approved the Settlement. After a hearing at which Petitioners were the only objectors, the Bankruptcy Court determined that the Trustee, having been directed by a majority in amount of the Bondholders, was authorized under the Indenture to enter into the Settlement on behalf of the Bondholders. *Id.* 46a-52a. The Bankruptcy Court also determined that it had subject matter jurisdiction over the Settlement under 28 U.S.C. § 1334(b), because the Settlement resolved claims "arising under title 11" and "arising in or related to cases under title 11," (*id.* 53a-54a), and it found the Settlement fair and equitable to all parties. *Id.* 58a.

4. The Settlement was also incorporated into Delta's plan of reorganization, which was approved by 89.19% of the Bondholders in number holding 97.35% of the bonds in amount. *Id.* 46a. Petitioners unsuccessfully sought a stay of the order approving the Settlement from both the Bankruptcy Court (*id.* 434a) and the District Court (*id.* 442a).

5. The plan was consummated in May 2007. As provided in the Settlement, Delta issued the Bondholders notes in the amount of $65,875,000 as well as 5,848,211 shares of Delta stock, both freely tradable. *Id.* 12a. Hundreds of million shares of Delta's stock have since traded hands, and Delta has paid tens of millions of dollars on the notes.

6. Petitioners appealed to the District Court, which held that the appeal was equitably moot, because the terms among the non-debtors could not be modified without upsetting the Settlement, pursuant to which tens of millions of dollars worth of freely tradable

Delta stock and notes had been distributed to hundreds of bondholders, as provided in the Plan of Reorganization – a distribution that the District Court concluded "cannot be reversed." *Id.* 14a-20a. The District Court further determined that even if approval of the Settlement could be reversed, such a reversal would create an "unmanageable, uncontrollable situation" for the Bankruptcy Court, given that Delta had also rejected, assumed and modified numerous contracts in accordance with the Settlement. *Id.* 19a. The District Court also rejected Petitioners' arguments on the merits, holding that the Bankruptcy Court had correctly determined that the Indenture authorized the Trustee's entry into the Settlement on behalf of the Bondholders (*id.* 24a-27a), and that the Bankruptcy Court had jurisdiction to approve the Settlement (*id.* 21a-24a).

7. The Court of Appeals for the Second Circuit affirmed the District Court's holding that Petitioners' claim was equitably moot (*id.* 5a-6a), and also affirmed the decision on the merits "for substantially the reasons stated in the Bankruptcy Court's thorough and well-reasoned decision" (*id.* 6a).

REASONS FOR DENYING THE PETITION

I. THIS CASE PRESENTS NO OPPORTUNITY TO DECIDE WHETHER BANKRUPTCY COURTS CAN RELEASE NON-DEBTORS

This case presents no opportunity to decide whether bankruptcy courts can discharge obligations owed by one non-debtor to another, because the Bankruptcy Court did not discharge any such obligation. The releases of KCAB and the Trustee included in the

Settlement as part of the renegotiation of Delta's Lease and Guaranty were consensually agreed to as part of the Settlement by the Trustee, acting on the Bondholders' behalf, as directed by a majority in amount of the Bondholders in accordance with the terms of the Indenture.

The first question stated in the Petition thus is simply not presented by this case. Nor does the Petition provide any reason for this Court to consider the question this case does in fact present—*i.e.*, whether a bankruptcy court can approve an agreement among a debtor and non-debtors that includes the *consensual* resolution of related issues among the non-debtors. That uncontroversial proposition, which Petitioners do not even purport to challenge, does not merit this Court's review.

A. Petitioners' Claims Against Respondents Were Released by Agreement of the Trustee on Their Behalf

Contrary to the Petition, this case does not present the question whether bankruptcy courts can release non-debtors from their debts to third parties. Petitioners claim that this case presents the issue presented but not decided in *Travelers Indem. Co. v. Bailey*, --- U.S. ---, 129 S. Ct. 2195 (2009). It does not.

In *Travelers*, the question was whether a bankruptcy court presiding over the bankruptcy of an insolvent asbestos manufacturer could discharge alleged liabilities of non-debtor insurance companies to non-consenting third-party asbestos claimants. After filing for bankruptcy, the asbestos manufacturer settled its coverage claims against its insurers. *Id.* at 2199. In approving that settlement, the bankruptcy

court enjoined "all persons" from asserting any claim against the insurers relating to asbestos. *Id.* Years later, certain asbestos claimants sued the insurers on various theories, including theories that the insurers had themselves directly engaged in actionable wrongdoing that harmed the claimants. A settlement of these claims was presented to the bankruptcy court that had overseen the asbestos manufacturer's bankruptcy, which decreed in approving the settlement that the claims were barred by its prior injunction. *Id.* at 2201.

The Second Circuit held that the bankruptcy court lacked authority to release the claims that the nonconsenting claimants sought to assert against the insurers where there was no impact on the *res* of the debtor's estate. *Johns-Manville Corp. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.)*, 517 F.3d 52, 66, 68 (2d Cir. 2008). This Court granted a petition for certiorari, but because it determined that the bankruptcy court's injunction was a final judgment that could not be collaterally challenged, it did not decide whether the injunction barring all claims against the insurers relating to asbestos had been proper. *Travelers*, 129 S. Ct. at 2206-07.

Petitioners also cite (Pet. 10) the Fifth Circuit's holding in *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995) that a bankruptcy court had improperly released a debtor's insurer from claims by third parties. The *Feld* court held that the release was improper because the bankruptcy court "provided no alternative means for [the claimant] to recover [and] improperly discharged a potential debt of . . . a nondebtor." 62 F.3d at 761.

Unlike in these cases, here the Bankruptcy Court did not discharge KCAB's or the Trustee's obligations to non-consenting third parties. Rather, it ordered that the non-debtor claims be released as set forth in an agreed Settlement among Delta, KCAB and the Trustee acting on behalf of the Bondholders that modified their respective obligations under the Lease, the Guaranty and the Indenture and included their mutual release of one another from claims based on those agreements and the Settlement. As the Bankruptcy Court stated in approving the Settlement, it "does not release claims against third parties, and releases only those claims amongst the Releasing Parties." Pet. App. 57a.

Petitioners do not appear to dispute that a bankruptcy court can approve a *consensual* release among non-debtors, a seemingly non-controversial proposition. *See, e.g.*, *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005) (identifying consensual releases as appropriate). Rather, they argue that this Court should decide "the extent to which a bankruptcy court may approve releases of non-debtor liability *without the consent of affected non-debtors*." Pet. 16 (emphasis added). Yet as shown above, that is not what happened here. In this case—unlike in *Travelers* and *Feld*—the releases were ordered by the Court with and upon the duly authorized consent of the Bondholders, by the Trustee acting on their behalf as directed by a majority of Bondholders by amount, as provided in the Indenture. Although Petitioners disputed the Trustee's authority to enter into the Settlement on their behalf without their consent, all three courts below construed the Indenture as authorizing the Trustee to bind *all* Bondhold-

ers. Petitioners do not ask this Court to review the correctness of that case-specific question of state law contract interpretation.

B. The Decision Below Does Not Conflict with any Other Circuit Court Decision

Petitioners assert that this case presents an opportunity to resolve a conflict among the circuit courts in interpreting section 524(e) of the Bankruptcy Code, which states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). Even if such a conflict exists, this case provides no occasion to resolve it, because Petitioners did not even cite section 524(e) when this case was before the Bankruptcy Court, the District Court or the Second Circuit, and it is well-settled that this Court does not decide questions not raised in the court of appeals. *See, e.g., Delta Air Lines, Inc. v. August*, 450 U.S. 346, 362 (1981). Moreover, even apart from Petitioners' waiver, this case presents no opportunity to resolve the claimed conflict, because section 524(e) is not implicated here.

Petitioners have identified no decision by any court that is inconsistent with the result reached below. It may be, as Petitioners contend, that some circuits have determined that section 524(e) prohibits bankruptcy courts from releasing non-debtors from liabilities shared with a bankrupt debtor, *see, e.g., Landsing Diversified Properties-11 v. First Nat'l Bank & Trust Co. (In re Western Real Estate Fund, Inc.)*, 922 F.2d 592, 600-02 (10th Cir. 1990) (holding that 524(e) prohibits bankruptcy courts from granting third party releases), and that others construe section

524(e) to mean simply that a discharge of a debtor does not in itself discharge other persons with liability for the same debt, *see, e.g.*, *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 657 (6th Cir. 2002) (holding that section 524(e) "explains the effect of a debtor's discharge" and "does not prohibit the release of a non-debtor"), *cert. denied*, 537 U.S. 816 (2002). None of the courts below had any occasion to choose sides in that dispute, however, because, as noted above, the releases approved as part of the Settlement were consensual, having been entered into by the Trustee on behalf of the Bondholders.

Petitioners point to no case holding that section 524(e) disallows a consensual release of the kind present here. Rather, in each of the cases cited by Petitioners where the court disallowed the release of a non-debtor, the release purported to bar claims by *non-consenting* persons. *See, e.g., Airadigm Commc'ns, Inc. v. Fed. Commc'ns Comm'n (In re Airadigm Commc'ns, Inc.)*, 519 F.3d 640, 655 (7th Cir. 2008) (considering "whether a bankruptcy court can release a non-debtor from creditor liability *over the objections of the creditor*" (emphasis added)); *Munford v. Munford, Inc. (In re Munford, Inc.)*, 97 F.3d 449, 453-55 (11th Cir. 1996) (considering whether, as part of a settlement between the debtor and a defendant, the bankruptcy court could enjoin non-settling defendants from seeking contribution from defendant); *American Hardwoods, Inc. v. Deutsche Credit Corp. (In re American Hardwoods, Inc.)*, 885 F.2d 621, 623 (9th Cir. 1989) (considering whether bankruptcy court could enjoin creditor from enforcing judgment against officers of the debtor); *Menard-Sanford v. Mabey (In*

re A.H. Robins Co.), 880 F.2d 694, 702 (4th Cir. 1989) (considering whether bankruptcy court could enjoin non-settling claimants from suing directors of debtor), *cert. denied*, 493 U.S. 959 (1989); *see also Underhill v. Royal*, 769 F.2d 1426, 1432 (9th Cir. 1985) (disallowing discharge of non-debtor from liabilities to securities fraud claimants where majority of claimants that consented to plan had no authority (unlike here) to bind minority of claimants that did not).

The question in each of these cases—whether Section 524(e) prevents bankruptcy courts from releasing non-debtors from *non-consenting* claimants—is not presented by this case, because the release of claims by the Bondholders was *consensually* agreed to by the Trustee, acting on their behalf and under their instruction, as provided by the Indenture.

Moreover, the cases cited by Petitioners all involve bankruptcy court releases of non-debtor claims that were preexisting and *independent* of the debtors' debt. No such release of preexisting or independent claims occurred here; instead, the very claims released were those that arose from the Settlement itself and were fully adjudicated at a hearing in front of the Bankruptcy Court. The Petitioners were never denied their "day in court"—in fact, they had it, in front of three different tribunals. Although Petitioners argued below that they had independent claims—*i.e.*, that KCAB was directly liable for the bonds and that the Trustee breached the Indenture by entering into the Settlement—the courts below carefully considered and rejected those very claims under the terms of the Indenture. They concluded that KCAB was not liable for bond debt under the Indenture (Pet. App. 36a; *id.* 27-28a) and that the Trustee did not breach

the Indenture by entering into the Settlement, because the Indenture authorized the Trustee's entry into the Settlement on behalf of the Bondholders (*id.* 46a-52a; *id.* 24a-27a). The Petition does not ask this Court to review either of these two constructions of the Indenture by the courts below. Nor would such review be an appropriate use of this Court's resources.

C. The Alternative Mootness Holding Below Makes this Case a Poor Vehicle to Review the Approval of the Settlement

This Court would not even be able to reach the question whether the non-debtor releases at issue were appropriate unless it first reversed the lower courts' holding that Petitioners' appeal was equitably moot. As shown below, however, Petitioners fail to explain why the mootness holding either was incorrect or presents any significant legal question meriting this Court's attention.

II. THE EQUITABLE MOOTNESS HOLDING BELOW DOES NOT MERIT REVIEW

Petitioners argue that this Court should evaluate the holding below that Petitioners' challenge to the Bankruptcy Court's approval of the Settlement was equitably moot. Pet. 17. But they identify no decision by this Court or any other court that casts doubt on that decision, which applied a well-settled principle governing appeals from bankruptcy courts. And in any event, this case is a particularly poor vehicle for examining when courts can properly deny an

appeal from a bankruptcy court order as equitably moot.

A. There Is No Circuit Conflict or Other Circumstance that Would Justify Review

Petitioners urge this Court to evaluate whether an appeal from a bankruptcy court order can *ever* be denied as equitably moot, but the Petition advances no persuasive reason for this Court to examine that question.

There is no dispute in the circuit courts, which agree that an appeal from a bankruptcy court order can be rendered equitably moot if the debtor's reorganization has been substantially consummated or if circumstances have so changed that any relief would create an unmanageable situation for the bankruptcy court. *See, e.g., Curreys of Neb., Inc. v. United Producers, Inc. (In re United Producers, Inc.)*, 526 F.3d 942, 947 (6th Cir. 2008) (explaining equitable mootness as "an equitable doctrine applied to protect parties' settled expectations and the ability of a debtor to emerge from bankruptcy"); *In re UNR Indus.*, 20 F.3d 766, 769 (7th Cir. 1994) (Easterbrook, J.) (noting that the essential question is "whether it is prudent to upset the plan of reorganization at this late date"), *cert denied*, 513 U.S. 999 (1994); *Mac Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002); *In re Continental Airlines*, 91 F.3d 553, 560 (3d Cir. 1996), *cert. denied*, 519 U.S. 1057 (1997); *Manges v. Seattle-First Nat'l Bank (In re Manges)*, 29 F.3d 1034, 1038-39 (5th Cir. 1994), *cert. denied*, 513 U.S. 1152 (1995); *Frito-Lay Inc. v. LTV Steel Co., Inc. (In re Chateaugay Corp.)*, 10 F.3d 944, 952-53 (2d Cir.

1993). Petitioners agree that "[a] majority of courts of appeals have adopted the doctrine." Pet. 18; *see also id.* 18-20 (collecting cases). They cite no circuit court that has rejected the doctrine, because there is none.

The application of well-settled principles of equitable mootness by the courts below presents no substantial question of federal law meriting review by this Court. Petitioners argue that equitable mootness has no basis in statute, but the same is true of other equitable doctrines. Indeed, as applied in bankruptcy cases, equitable mootness merely reflects "the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties." *In re Envirodyne Indus.*, 29 F.3d 301, 304 (7th Cir. 1994); *see also UNR Indus.*, 20 F.3d at 769. Petitioners also argue that equitable mootness violates the separation of powers, by precluding review of bankruptcy court rulings by an Article III court (Pet. 25), but Petitioners did not raise that argument before either of the courts below and have thus failed to preserve it, *see, e.g.*, *Delta Air Lines*, 450 U.S. at 362. In any event, this Court has, of course, approved similar prudential limitations on the availability of relief by Article III courts, *see, e.g.*, *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-75 (1982) (explaining prudential limitations on standing); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813-16 (1976) (describing grounds for abstention).[1]

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[1] The amicus brief supporting the Petition suggests that parties can avoid review by an Article III court by rushing to con-

Regardless, whatever force Petitioners' objection might have in cases where there was no Article III review, it does not correspond to what happened here. Both the District Court and the Court of Appeals *did* review the Bankruptcy Court's decision—and rejected Petitioner's arguments on appeal *on the merits*, as an alternative holding to the mootness ruling. Pet. App. 20a-29a, 6a. Petitioners accordingly were *not* denied Article III review, and thus the separation-of-powers question that they urge this Court to decide is not even presented by this case.

B. This Case Is a Poor Vehicle for Deciding Whether Equitable Considerations Can Moot Appeals from Bankruptcy Courts

Even if there were a substantial question whether district courts can deny appeals from bankruptcy court orders on prudential grounds where a plan of distribution has been substantially consummated or relief would create an unmanageable situation for the bankruptcy court, this case presents a poor vehicle for considering it, for two reasons.

First, given that the courts below also approved the Bankruptcy Court's decision on the merits—affirming

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summate a plan before a stay can be obtained. *See* Brief of Professor George W. Kuney as Amicus Curiae in Support of Petition for a Writ of Certiorari 8-9. Nothing of the kind happened here. To the contrary, Petitioners sought a stay from the Bankruptcy Court and the District Court before the plan was consummated, but failed to show either the required likelihood of success (Pet. App. 433a) or irreparable harm (*id.* 435a-436a). Indeed, on the latter point, Petitioners elected not to argue that their claims to set aside the releases would be mooted absent a stay. *Id.* 436a.

on that alternative ground as well—a reversal on the issue of mootness would not change the outcome of the case. Rather, for Petitioners to prevail, this Court would also need to determine, on the merits, that the Bankruptcy Court erred in approving the Settlement. Yet the Petition fails to show that it would be an appropriate use of this Court's resources to review the Bankruptcy Court's rulings that the Trustee was authorized under the Indenture to enter into the Settlement on behalf of the Bondholders, *see supra* pp. 8-14, or that it had subject matter jurisdiction over the Settlement, *see infra* pp. 19-22. The Court would do better to await a case where the mootness holding was determinative.

Second, in view of the District Court's conclusion that *no* remedy could feasibly be implemented (Pet. App. 16a-18a), a decision in this case would likely provide limited guidance at best. By the time the District Court decided Petitioners' appeal, Delta had already distributed freely tradable stock and notes that had repeatedly changed hands – a distribution that, as the District Court noted, "cannot be reversed." *Id.* 16a. A decision in this case would thus shed little light on how courts should proceed where some remedy might be feasible despite substantial consummation of a plan. Review by this Court would likely be more instructive in a case where some form of relief might be practicable. *Cf. Continental*, 91 F.3d at 571 (Alito, J., dissenting) (disapproving denial of appeal on grounds of equitable mootness where "the courts could surely fashion some measure of

lesser relief that would not disturb the reorganization").[2]

III. THE FACTUAL FINDING BELOW THAT THE SETTLEMENT RELATED TO DELTA'S BANKRUPTCY DOES NOT MERIT REVIEW

The Bankruptcy Court applied well-settled legal standards to the specific circumstances of this case in determining that it had jurisdiction over the Settlement. That case-specific holding was affirmed by both the District Court and the Court of Appeals and is not an appropriate subject for this Court's discretionary review.

The subject matter jurisdiction of the bankruptcy courts extends to "all civil proceedings . . . arising in or related to cases under title 11." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). In nearly every circuit, the existence of "related to" jurisdiction is determined by the test set forth in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984). As this Court noted in *Celotex*, a bankruptcy court has "related to" jurisdiction under *Pacor* if "the outcome of th[e] proceeding could conceivably have any effect on the estate being administered in bankruptcy." 514 U.S.

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[2] Petitioners argued below that the District Court would not have to unwind the Settlement but could somehow excise only its releases. But as the District Court explained, "to nullify the releases while leaving the remainder of the consummated Settlement intact would ignore the tradeoff that allowed the parties to settle in the first instance and would treat a non-severable provision of the Settlement Agreement as dispensable." Pet. App. 17a. As the District Court also noted, disallowing the releases would permit the parties to terminate the Settlement. *Id.*

at 308 n.6 (quoting *Pacor*, 743 F.2d at 994) (emphasis omitted). Petitioners have not challenged the *Pacor* standard as such. Nor did the courts below find jurisdiction under *Pacor* on the ground that the non-debtor claims had only a "conceivable effect" on the estate; rather, they held that the relevant agreements modified by the Settlement—*i.e.*, the Lease between Delta and KCAB, the Guaranty between Delta and the Trustee and the Indenture between KCAB and the Trustee—were "inextricably related" to one another. Pet. App. 53a; *see also id.* 21a (noting that the settlement of non-debtor claims had a "very clear affect" on Delta's estate). Indeed, although Delta was not a party to the Indenture, the Lease required Delta "to do and perform all acts and things contemplated in the Indenture to be done or performed by it." Pet. App. 371a. As the Court of Appeals below affirmed (*id.* 6a), the Bankruptcy Court correctly concluded that it had jurisdiction "under both the 'arising under title 11' and the 'arising in or related to cases under title 11' clauses of 28 U.S.C. § 1334(b)," *id.* 54a.

That decision presents no substantial question of federal law that merits review by this Court. Rather, it rests on case-specific determinations regarding the inextricable relationship between the Lease, the Guaranty and the Indenture and the parties' respective rights under each. Pet. App. 53a. The District Court affirmed that case-specific factual finding (*id.* 21a), as did the Second Circuit (*id.* 6a) (approving the Bankruptcy Court's "thorough and well-reasoned decision"). No useful purpose would be served by yet another review, by this Court, of this fact-intensive issue. *See, e.g., United States v. Johnston*, 268 U.S.

220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."). Although Petitioners assert that the scope of "related to" jurisdiction is "ambiguous" (Pet. 29), they fail to identify any ambiguity, much less one that could be resolved by this case. Nor do they acknowledge that the Bankruptcy Court held that the claims resolved by the Settlement not only "related to" Delta's bankruptcy, but also "arose under" Title 11 of the Bankruptcy Code. *See* Pet. App. 53a-54a (citing 28 U.S.C. § 1334(b)).

Petitioners assert that this case warrants this Court's exercise of its supervisory power on the ostensible grounds that the Bankruptcy Court "depart[ed] from the accepted and usual course of judicial proceedings" by "restructur[ing] the debts of non-debtors." Pet. 29. That contention grossly mischaracterizes what happened in this case, in two respects.

First, although KCAB issued the bonds that were cancelled by the Settlement, the courts below found that the *only* recourse permitted under the Indenture on that bond debt was against Delta, not against KCAB. Pet. App. 36a, 27-28a. In restructuring that bond debt, the Settlement restructured a debt of *Delta*. As the District Court explained, the Settlement "had more than a 'conceivable effect' on the bankrupt estate; it in fact had a very clear effect on Delta's obligations," and thus squarely fell within the Bankruptcy Court's jurisdiction. *Id.* 21a. Petitioners' contention that the Settlement *also* restructured a debt of KCAB flies in the face of the rulings of the courts below that, under the terms of the Indenture, KCAB had no liability for these non-recourse bonds.

Nor does the Petition advance any reason why this Court would review that case-specific ruling of contract interpretation, which presents no substantial question of federal law.

Second, the Petition fails to show that the District Court's approval of the "consensual releases" of KCAB and the Trustee in the Settlement (Pet. 440a) departed in the least from settled precedent, as explained above. *See supra* pp. 8-14. Petitioners' contention that the Bankruptcy Court "released" non-debtors simply ignores the contrary holdings below that the Trustee was authorized by the Indenture to enter into the Settlement on behalf of the Bondholders. Petitioners assert in passing that this construction of the Indenture was inconsistent with "bond indenture law" (Pet. 30-31), but the courts below each rejected that argument and Petitioners do not ask this Court to review that case-specific question of contract interpretation, which in any event presents no substantial question of federal law for this Court to decide.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

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AD HOC COMMITTEE OF KENTON COUNTY BONDHOLDERS,
Petitioners,

v.

DELTA AIR LINES, INC.,
KENTON COUNTY AIRPORT BOARD, UMB
BANK, N.A., AS TRUSTEE, POST EFFECTIVE DATE COMMITTEE
AS SUCCESSOR TO THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF DELTA AIR LINES, INC.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

The Petitioners, members of the Kenton County Bondholders Committee, respectfully submit this supplemental brief in further support of their petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

ARGUMENT

As shown in the Petition, the circuit courts, construing the same provisions of the Bankruptcy Code—specifically sections 524(e) and 105(a)—are divided over whether those sections authorize a bankruptcy court to release non-debtors.

Two circuits—the Ninth and Tenth—have held that bankruptcy courts lack jurisdiction to release non-debtors from liability. The Second, Fourth, Sixth, Seventh and Eleventh Circuits, however, have held that such releases are permitted, and the Third Circuit has indicated in *dicta* that such releases may be permissible under certain circumstances.

Although the Fifth Circuit had also suggested, in *dicta*, that such releases might be permissible, the split among the circuits on this issue has become even more defined with the Fifth Circuit's recent decision in *Bank of N.Y. Trust Co., NA v. Official Unsecured Creditors' Committee (In re The Pacific Lumber Co.)*, --- F.3d ---, No. 08-40746, 2009 WL 3082066 (5th Cir. Sept. 29, 2009). In that case, the bankruptcy court confirmed a reorganization plan that released several non-debtors "from liability—other than for willfulness and gross negligence—related to proposing, implementing, and administering the plan." *Id.* at *15.[1] The Fifth Circuit held, "however, that 'discharge of a debt of the debtor does not affect the liability of any other entity on ... such a debt.'" *Id.* (citing 11 U.S.C. § 524(e)).

Indeed, the court noted that, "[i]n a variety of contexts, this court has held that Section 524(e) only releases the

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[1] As an initial matter, the court found that "this claim is not equitably moot. '[E]quity strongly supports appellate review of issues consequential to the integrity and transparency of the Chapter 11 process.'" *Id.* (quoting *In re Hilal*, 534 F.3d 498, 500 (5th Cir. 2008)).

debtor, not co-liable third parties." *Id.* (citing *In re Coho Res., Inc.*, 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. Nat'l Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997); *Matter of Edgeworth*, 993 F.2d 51, 53-54 (5th Cir. 1993); *Feld v. Zale Corp.*, 62 F.3d 746 (5th Cir. 1995)). The court described those cases as establishing a "categorical prohibition against non-debtor releases." *Id.* at *15 & n.27. Accordingly, finding "little equitable about protecting the released non-debtors from negligence suits arising out of the reorganization," the court struck the non-debtor releases. *Id.* at *15-16.[2]

Thus, the Fifth Circuit joins the Ninth and Tenth Circuits in holding that bankruptcy courts are without jurisdiction to release non-debtors from liability, further demonstrating the division among the circuits on this important issue which, as shown in the Petition, is crucial to the reorganization of businesses under the Bankruptcy Code.

---

[2] The court did not strike releases "with respect to the Creditors Committee and its members," finding that such releases, although not permissible under section 524(e), comported with the qualified immunity enjoyed by creditors committees under section 1103(c) of the Bankruptcy Code. *Id.* at *15-16.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 2009

No. 09-104 (2)

140

IN THE

Supreme Court of the United States

MOTION FILED

AUG 20 2009

AD HOC COMMITTEE OF KENTON COUNTY BONDHOLDERS,
Petitioners,

v.

DELTA AIR LINES, INC. KENTON COUNTY AIRPORT BOARD, UMB BANK, N.A., AS TRUSTEE, POST EFFECTIVE DATE COMMITTEE AS SUCCESSOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF DELTA AIR LINES, INC.,
Respondents.

CORRECTED COPY

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF PROFESSOR GEORGE W. KUNEY AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Supreme Court, U.S.
FILED
MAY 13 2009
OFFICE OF THE CLERK

DOCKET NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2008

ALBERT HOLLAND,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

APPLICATION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

COMES NOW THE PETITIONER, ALBERT HOLLAND, by and through his undersigned counsel, and herein moves for leave to proceed *in forma pauperis*. In support thereof, Petitioner would state:

1. Petitioner is an indigent death-sentenced inmate in the State of Florida.
2. On this date, Petitioner is filing a Petition for A Writ of Certiorari to the Eleventh Circuit Court of Appeals.
3. Petitioner, who is without funds, seeks leave to proceed in this matter *in forma pauperis*.
4. The undersigned counsel was appointed by the United States District Court for the

ORIGINAL

(6)

Southern District of Florida, and by the Eleventh Circuit Court of Appeals, pursuant to the Criminal Justice Act.

WHEREFORE, Petitioner moves to proceed *in forma pauperis*.

Respectfully submitted,

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Attorney for Petitioner-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by U.S. Mail to Lisa-Marie Lerner, Assistant Attorney General, Office of the Attorney General, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401, on this 13th day of May, 2009.

TODD G. SCHER
Counsel for Petitioner

09-532

Supreme Court, U.S.
FILED
MAY 1 3 2009
OFFICE OF THE CLERK

DOCKET NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2008

ALBERT HOLLAND,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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10

QUESTIONS PRESENTED--CAPITAL CASE

In determining that Petitioner was not entitled to equitable tolling to excuse the late filing of his habeas petition, the Eleventh Circuit determined that the reason for the late filing was the "gross negligence" on part of Petitioner's state-appointed collateral attorney's failure to file the petition in a timely fashion despite repeated instructions from the Petitioner to do so. However, under the new test announced by the Eleventh Circuit in Petitioner's case, *no* allegation of attorney negligence or failure to meet a lawyer's standard of care, in the absence of bad faith, dishonesty, divided loyalty, or mental impairment, could *ever* qualify as an exceptional circumstance warranting equitable tolling.

This Court should grant *certiorari* to the Eleventh Circuit to determine whether "gross negligence" by collateral counsel, which directly results in the late filing of a petition for a writ of habeas corpus, can qualify as an exceptional circumstance warranting equitable tolling, or whether, in conflict with other circuits, the Eleventh Circuit was proper in determining that factors beyond "gross negligence" must be established before an extraordinary circumstance can be found that would warrant equitable tolling.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2008

ALBERT HOLLAND,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Petitioner, Albert Holland, respectfully petitions this Court for a writ of certiorari to review the decision of the Eleventh Circuit Court of Appeals.

CITATION TO OPINION BELOW

The decisions of the United States Court of Appeals for the Eleventh Circuit in this cause is reported as *Holland v. Florida*, 539 F. 3d 1334 (11th Cir. 2008), and is attached hereto as Attachment A. A timely petition for rehearing and rehearing *en banc* was denied on January 13, 2009 (Attachment B). An extension of time to file the instant petition was granted by Justice Thomas up to and including April 13, 2008. This petition is timely filed.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals on the basis of 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §2244 (d) provides:

> (1) A 1-year period of limitations shall apply to an application for a writ of habeas corpus by a person in state custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –
>
> > (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
> >
> > (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
> >
> > (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
> >
> > (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
>
> (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

PROCEDURAL HISTORY

A. Trial/Direct Appeal Proceedings.

Petitioner was indicted on or about August 16, 1990, in Broward County, Florida, on four counts, including first-degree premeditated murder. He pled not guilty and, after a jury trial, was convicted and sentenced to death for the first-degree murder count, life imprisonment for sexual battery, forty (40) years for attempted first-degree murder, and seventeen (17) years imprisonment for armed robbery. On direct appeal, however, the Florida Supreme Court reversed and remanded for a new trial. *Holland v. State*, 636 So. 2d 1289 (Fla. 1994).

On retrial, Petitioner was again found guilty,[1] and, at a penalty phase, the jury recommended a sentence of death by a vote of eight (8) to four (4). He was thereafter sentenced to death on the first-degree murder count, life imprisonment on the armed robbery count, fifteen (15) years imprisonment on the attempted sexual batter count, and thirty (30) years on the attempted first-degree murder count. On direct appeal, the Florida Supreme Court affirmed the judgments of conviction and sentences, including the sentence of death. *Holland v. State*, 773 So. 2d 1065 (Fla. 2000). *Certiorari* review was denied on October 1, 2001. *Holland v. Florida*, 534 U.S. 834 (2001).

B. State Postconviction Proceedings.

On October 1, 2001, pursuant to state procedures, *see* Fla. R. Crim. P. 3.851

---

[1] However, at the retrial, Petitionerwas found guilty of the lesser offense attempted sexual battery, rather than sexual battery as alleged in Count 3 of the indictment.

(b), the Florida Supreme Court assigned the Office of the Capital Collateral Regional Counsel–South [CCRC-South] to represent Petitionerfor purposes of his collateral representation. However, CCRC-South moved to withdraw and, on November 2, 2001, the state circuit court appointed attorney Bradley Collins to represent Petitioner pursuant to the "registry" list of attorneys. Following the discovery process permitted under Fla. R. Crim. P. 3.852, *see generally* DE16 at 3-4, Petitioner, through Mr. Collins, filed his motion for postconviction relief pursuant to Fla. R. Crim. P. 3.851 on or about September 17, 2002. The motion was ultimately denied by the state circuit court and affirmed by the Florida Supreme Court on November 10, 2005. *Holland v. State*, 916 So. 2d 750 (Fla. 2005). No motion for rehearing was filed by Mr. Collins and, as a result, the mandate issued from the Florida Supreme Court on December 1, 2005.[2] Mr. Collins never informed Petitioner that his appeal had been denied by the Florida Supreme Court nor that the mandate had issued, thus triggering the time in which a timely petition for writ of habeas corpus needed to be filed.

Petitioner thereafter filed a *pro se* petition for writ of habeas corpus (DE1).[3] Petitioner thereafter moved the court to discharge attorney Collins and to appoint new counsel (DE6). After ordering both the Respondent and Collins to file

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[2]Mr. Collins, on behalf of Petitioner, did file a petition for *certiorari* review in this Court on February 8, 2006, a petition which was denied on April 17, 2006. *Holland v. Florida*, 126 S.Ct. 1790 (2006).

[3]The circumstances leading up to the filing of Petitioner's *pro se* petition are fully discussed in the section of this Petition discussing the reasons that the writ should be granted in this case.

responses to Petitioner's motion, and after reviewing these responses, the court ultimately entered an order appointing the undersigned counsel to represent Petitioner (DE22). The Petitioner, through undersigned counsel, thereafter filed a consolidated pleading (with an extensive appendix) in which he alleged his entitlement to equitable tolling and to an evidentiary hearing (DE35, 38). The Respondent filed a sur-reply (accompanied by an appendix) in which it contended that Petitioner was not entitled to equitable tolling (DE41). On April 27, 2007, the district court entered an order dismissing Petitioner's §2254 petition as untimely, concluding that equitable tolling was not warranted (DE46). A motion to alter or amend judgment, and supplement thereto, was filed; following a response by the Respondent (DE49), the court denied the motion (DE52). A timely notice of appeal was filed (DE53), and the district court granted a COA on the issue of whether the Petitioner was entitled to equitable tolling (DE60).

On August 18, 2008, the Eleventh Circuit affirmed the district court's dismissal of Petitioner's habeas corpus proceeding. Declining to conclude that Petitioner was not diligent in his efforts, the Eleventh Circuit focused instead on whether the acts of Petitioner's state collateral counsel were sufficient to constitute an "extraordinary circumstance" sufficient to warrant equitable tolling. Recognizing that attorney misconduct going beyond "mere negligence" could constitute an extraordinary circumstance warranting equitable tolling (Attachment

A at 8) (citing *Downs v. McNeil*, 529 F. 3d 1311 (11th Cir. 2008),[4] and that Petitioner's state collateral counsel acted in a "grossly negligent" manner in his representation of Petitioner and his failure to file a federal habeas petition "despite repeated instructions to do so," (Attachment A at 9), the Eleventh Circuit concluded that

> no allegation of lawyer negligence or of failure to meet a lawyer's standard of care–in the absence of an allegation and proof of bad faith, dishonesty, divided loyalty, mental impairment or so forth on the lawyer's part–can rise to the level of egregious attorney misconduct that would entitle Petitioner to equitable tolling. Pure professional negligence is not enough. This is pure-professional-negligence case. . . .

(Attachment A at 9-10).

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[4] *Downs* had issued while Petitioner's case was pending before the Eleventh Circuit and shortly before Petitioner's appeal was disposed of by that Court.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO ADDRESS THE APPROPRIATE STANDARD FOR EQUITABLE TOLLING WHEN LATE FILING OF A HABEAS PETITIONER IS DUE TO THE "GROSS NEGLIGENCE" OF STATE COLLATERAL COUNSEL , AND WHETHER THE "GROSS NEGLIGENCE" OF STATE COLLATERAL COUNSEL CAN CONSTITUTE AN EXTRAORDINARY CIRCUMSTANCE SUCH THAT EQUITABLE TOLLING IS APPROPRIATE TO EXCUSE A LATE PETITION.

In affirming the dismissal of Petitioner's habeas corpus petition as untimely, the Eleventh Circuit set out a bright-line standard for determining under what circumstances the actions of a state collateral lawyer's actions, or inactions, can rise to the level of an "extraordinary circumstance" such that a habeas petitioner's late filing can be excused under the doctrine of equitable tolling. In Petitioner's case, the Eleventh Circuit found that Petitioner's state collateral counsel acted in a "grossly negligent" manner in his "failure to file a federal habeas petition timely, despite repeated instructions to do so" (Attachment A at 9). However, despite finding that counsel had acted in a "grossly negligent" manner, the Eleventh Circuit condoned his behavior by concluding that "no allegation of lawyer negligence or of failure to meet a lawyer's standard of care–in the absence of an allegation and proof of bad faith, dishonesty, divided loyalty, mental impairment or so forth on the lawyer's part– can rise to the level of egregious misconduct that would entitle Petitioner to equitable tolling" (Attachment A at 9-10). The Eleventh Circuit's stubborn refusal to acknowledge that "gross negligence" is sufficient to warrant equitable tolling is in conflict with the holdings of other

circuits and is a near-impossible standard to meet. If the late filing is due to the "gross negligence" of state collateral counsel, as it was in the instant case, Petitioner submits that an exceptional circumstance has been established and that equitable tolling is warranted.

Despite the State of Florida's promise to Petitioner that he have counsel to competently and effectively represent him in both his state and federal postconviction litigation, a promise that would be purportedly enforced by judicial monitoring,[5] Petitioner's state collateral attorney, Mr. Collins, failed to timely file a §2254 petition on behalf of Petitioner.[6] Petitioner, *pro se*, filed a habeas corpus

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[5]When Florida created the registry system, it took the important step of creating an affirmative obligation for the state courts to monitor registry counsel. Fla. Stat. §27.11(12) reads:

> The court shall monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation. The court shall also receive and evaluate allegations that are made regarding the performance of assigned counsel. The Chief Financial Officer, the Department of Legal Affairs, the executive director, or any interested person may advise the court of any circumstance that could affect the quality of representation, including, but not limited to, false or fraudulent billing, misconduct, failure to meet continuing legal education requirements, solicitation to receive compensation from the capital defendant, *or the failure to file appropriate motions in a timely manner*.

(emphasis added). The Florida Supreme Court has also held that because state collateral counsel are appointed by operation of statute, such representation must be effective in order to give any meaning to the statutory provision. *See Spalding v. Dugger*, 526 So. 2d 71, 72 (Fla. 1988).

[6]When Mr. Collins was appointed to represent Petitioner, he was contractually bound by the mandates of Fla. Stat. §27.711(2) (2005), which provides:

> After appointment by the trial court under s. 27.710, the attorney must

petition pursuant to 28 U.S.C. §2254, on January 19, 2006.[7] In the district court and the Eleventh Circuit, Respondent argued that Petitioner's petition was filed thirty-eight (38) days beyond the one-year statute of limitations set forth in 28 U.S.C. §2244 (d)(1) (DE14 at 10 *et. seq.*). In light of the late filing, Petitioner acknowledged the late filing but urged that he was entitled to equitable tolling for a number of reasons.

Equitable tolling of the AEDPA statute of limitations for filing a federal habeas corpus petition set forth in 28 U.S.C. §2244(d)(1) is appropriate where: (1) the petitioner has been prevented from asserting his rights in some extraordinary way, and (2) the petitioner has exercised reasonable diligence. *See, e.g. Merritt v. Blaine*, 326 F. 3d 157, 168 (3d Cir. 2003); *Sandvik v. United States*, 177 F. 3d 1269, 1271 (11th Cir. 1999); *Marsh v. Soares*, 223 F. 3d 1217, 1220 (10th Cir. 2000). As the Eleventh Circuit has explained, equitable tolling is available to a habeas petitioner who "untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." *Sandvik*, 177 F. 3d at 1271. *Accord Steed v. Head*, 219 F. 3d 1298, 1300 (11th Cir. 2000).

> immediately file a notice of appearance with the trial court indicating acceptance of the appointment to represent the capital defendant throughout all postconviction capital collateral proceedings, *including federal habeas corpus proceedings*, in accordance with this section or until released by order of the trial court.

(emphasis added).

[7]The State of Florida acknowledged in the district court litigation that January 16, 2006, the date that Petitioner signed the petition, was the "filing" date due to the "mailbox rule" applicable to a prisoner filing (DE14 at 12 n.4).

While equitable tolling is an "extraordinary remedy" to be applied "sparingly," *id.*, it is nonetheless a remedy that can be applied when a court finds that a petitioner has made a sufficient showing of both extraordinary circumstances and diligence. *Pace v. DiGuglielmo*, 544 U.S. 408, 419 (2005). Although equitable tolling is not appropriate in cases of "garden variety excusable neglect," *Irwin v. Dep't. of Veterans Affairs*, 498 U.S. 89, 96 (1990), it should be evaluated on a case-by-case basis and granted upon the establishment of a "unique, specific set of facts." *Browning v. AT&T Paradyne*, 120 Fl. 3d 222, 227 (11th Cir. 1997). *See also Arthur v. Allen*, 452 F. 3d 1234, 1253 (11th Cir. 2006) ("A determination as to whether rare and exceptional circumstances are presented requires the examination of the facts in each case") (citing *Knight v. Schofield*, 292 F. 3d 709, 711 (11th Cir. 2002)). The "focus" of the inquiry is on the circumstances surrounding the late filing of the habeas petition, and not on the circumstances of the underlying conviction. *Arthur v. Allen, supra* at 1253.

Given the extraordinary circumstances in this case and the diligence established by the Petitioner,[8] this Court should grant certiorari review of the Eleventh Circuit's decision in this case for the following reasons.

A. Facts In Support of Equitable Tolling.

Despite a long and documented history of an "unstable mental condition," *Holland v. State*, 773 So. 2d 1065, 1069-70 (Fla. 2000), Petitioner's own actions more than establish both extraordinary circumstances accompanied by the

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[8]The Eleventh Circuit never addressed the issue of Petitioner's diligence.

requisite showing of diligence such that equitable tolling is appropriate. It is difficult to imagine what else Petitioner could have done; if the circumstances presented below do not establish diligence, then the concept simply has no relevant meaning. Indeed, the Eleventh Circuit did not attribute the late filing of Petitioner's habeas petition to a lack of diligence; rather, the direct cause of the late filing was due to the fact that Mr. Collins acted in a "grossly negligent" manner in failing to timely file the petition "despite repeated instructions to do so" from Petitioner (Attachment A at 9)

Early on in Mr. Collins's representation of Petitioner in state court, Petitioner sought assurances from Mr. Collins that his deadlines, both state and federal, would be honored. For example, in early 2002, Petitioner sought reassurance from Mr. Collins that his state postconviction motion would be filed timely and that his federal habeas deadline be secured; in response, Mr. Collins informed Petitioner that he was "aware of state time-limitations and federal exhaustion requirements" (DE38, Appendix B). Unsatisfied with Mr. Collins's representation in the time period leading up to and including the filing of his Rule 3.851 motion, Petitioner sought to file, in the state circuit court, a motion to supplement the record with additional issues that Mr. Collins did not include as claims for relief; the state circuit court, however, struck Petitioner's pleading as a nullity in light of the fact that he was represented by counsel (DE38, Appendix

C).[9] In his December 23, 2002, correspondence to Petitioner, Mr. Collins noted that Petitioner's claims "will [] be ripe for presentation in a petition for writ of habeas corpus in federal court" should the Florida Supreme Court deny collateral relief and "should the United States Supreme Court deny any petition for writ of certiorari" (DE38, Appendix C at 3).[10] Mr. Collins further reassured Petitioner by letter dated January 22, 2003, that if the circuit court were to deny relief, he would ensure that the "proper appeals" would be undertaken and asked for Petitioner's "confidence" and "sense of unity" in "this very delicate matter" (DE38, Appendix F).

An evidentiary hearing on Petitioner's Rule 3.851 motion took place in April, 2003, and the state circuit court denied relief in May, 2003. Remaining unsatisfied with Mr. Collins's representation, Petitioner, on July 18, 2003, filed a

---

[9]Logs generated by the Florida Department of Corrections establish that from the time of his appointment until his representation ceased in 2006, Mr. Collins visited Appellant at Union Correctional Institution only two times prior to the filing of the Rule 3.851 motion: on January 29, 2002, for approximately three (3) hours, and again on September 13, 2002, for approximately 90 minutes (DE38, Appendix D). Mr. Collins's investigator, Don Carpenter, visited Appellant two times Union Correctional Institution, on October 4, 2002, and November 6, 2002, both of which were subsequent to the filing of the Rule 3.851 motion (DE38, Appendix E). Mr. Collins did also meet with Appellant one time while Appellant was in Broward County for his evidentiary hearing in April, 2003.

[10]Based on this language, it is clear that Mr. Collins was under the belief that Petitioner's time to file his federal habeas petition would continue to be tolled until this Court denied certiorari from the state courts' determination of his collateral claims for relief. Significantly, in 2002, Mr. Collins did not take the position that Petitioner's statute of limitations had already expired by the time he was appointed in November, 2001; Mr. Collins substantially changed his position when confronted with the fact that he had missed the deadline to file Petitioner's habeas petition.

grievance with The Florida Bar, noting that his Rule 3.851 motion had been denied on May 16, 2003, that Mr. Collins had failed to adequately represent him, and that he was concerned that his legal issues be presented to the state courts so they "will not be procedurally barred when I get to the Federal Courts" (DE38, Appendix G). The Florida Bar, on August 20, 2003, refused to initiate an investigation into Petitioner's complaints, however (DE38, Appendix H). In the meantime, while Petitioner's complaints were pending with The Florida Bar, he sought relief in the Florida Supreme Court on August 8 and 18, 2003 (DE38, Appendix I at 1).[11] The State of Florida moved to strike these pleadings because they were unauthorized as Petitioner was represented by counsel (DE38, Appendix I at 1), and, on October 30, 2003, the Florida Supreme Court granted the State of Florida's motion (DE38, Appendix I at 2).

Petitioner's concern at this time was the fact that Mr. Collins had not been in communication with him concerning the pending appeal; as evidenced in the Florida Supreme Court's docket, Petitioner himself inquired by letter to the Florida Supreme Court as to the status of when the appeal was filed and when the record on appeal was due to be filed (DE38, Appendix I at 1). Petitioner again

---

[11]According to the Florida Supreme Court docket, Petitioner's *pro se* pleadings were construed as motion to amend and supplement state habeas corpus petition (DE38, Appendix I). However, Mr. Collins had not yet filed a state habeas corpus petition for Petitioner; it was not filed until January 9, 2004 (DE38, Appendix J). Of course, given Petitioner's lack of legal knowledge and the fact that he was suffering what the Florida Supreme Court determined to be an "unstable mental condition," the fact that he was confused about what to file and when further establishes that Mr. Collins had a heightened duty to keep Petitioner informed of the status of his case.

contacted the Florida Supreme Court as reflected in the November 24, 2003, docket entry, and the Court advised Petitioner when his Initial Brief was due to be filed (DE38, Appendix I at 2). After another unsuccessful attempt to amend and supplement a state habeas petition (DE38, Appendix J at 1), Petitioner, on February 23, 2004, filed a *pro se* motion to remove Mr. Collins as his counsel and to appoint competent conflict-free counsel (DE38, Appendix I at 2; Appendix J at 1). The State of Florida opposed the motion, and, on May 5, 2004, the Florida Supreme Court granted the State's motion and struck Petitioner's *pro se* motion (DE38, Appendix I at 3).

In the meantime, Petitioner, still not able to get updated information from Mr. Collins about the status of his case, wrote to the Florida Supreme Court on April 23, 2004, requesting a copy of the State's Answer Brief, which had been filed on April 15, 2004 (DE38, Appendix I at 3). On April 29, 2004, the Florida Supreme Court advised Petitioner that he would have to pay for copies of the requested documents (Appendix I at 3). It was *after* the Florida Supreme Court was aware that Mr. Collins had not provided Petitioner with the State's Answer Brief that, on May 5, 2004, it granted the State's motion to strike Petitioner's *pro se* request for competent counsel to represent him. At no time did the Florida Supreme Court appear to even attempt to engage in any "monitoring" of Mr. Collins's performance pursuant to its statutory mandate. *See supra* n.6.

Petitioner again sought to remove Mr. Collins on June 17, 2004, this time requesting a hearing pursuant to *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA

1973) (DE38, Appendix I at 3; Appendix J at 2).[12] On July 7, 2004, the Florida Supreme Court ordered both Mr. Collins and the State to respond (DE38, Appendix I at 4; Appendix J at 2). Without ordering a hearing, the Florida Supreme Court, on October 22, 2004, denied Petitioner's motion, again without attempting to comply with its mandated oversight of Mr. Collins's representation of Petitioner (DE38, Appendix I at 4).

The briefing in Petitioner's appeal to the Florida Supreme Court was concluded by the filing of his Reply Brief on June 16, 2004 (DE38, Appendix I at 3). Oral argument was conducted on February 10, 2005 (DE38, Appendix I at 4). On March 3, 2005, Petitioner wrote to Mr. Collins the following, in pertinent part:

> I write this letter to ask that you please write me back as soon as possible to let me know what the status of my case is on appeal to the Supreme Court of Florida.
>
> If the Florida Supreme Court denies my 3.850-3.851 and state habeas corpus appeals, **please file my 28 U.S.C. 2254 writ of habeas corpus petition, before my deadline to file it runs out (expires).**

(DE38, Appendix K) (emphasis added). Having heard nothing from Mr. Collins despite his written request for a status, Petitioner, on June 15, 2006, again wrote to Mr. Collins:

> On March 3, 2005, I wrote you a letter, asking that you let me know the status of my case on appeal to the Supreme Court of Florida.

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[12]In *Nelson*, the court set forth a procedure requiring a trial court to inquire of a defendant and appointed counsel when allegations of incompetency are made and, if established, to appoint substitute counsel or allow the defendant to proceed *pro se*. *Nelson*, 274 So. 2d at 259.

Also, have you begun preparing my 28 U.S.C. §2254 writ of habeas corpus petition? Please let me know, as soon as possible.

(DE38, Appendix L) (emphasis added).[13]

Not only was Petitioner vainly attempting to secure the status of his appeal from Mr. Collins, he was also informing Mr. Collins about the need to begin preparing his federal habeas corpus petition so that it would be filed within the deadline. However, as noted above, Petitioner received no response at all from Mr. Collins. Undeterred, Petitioner took additional steps while his case was still in state court in order to keep updated as to the status of his appeal. In October, 2005, Petitioner contacted the Florida Supreme Court about how to find his case on its website so that Petitioner could secure the assistance of outside supporters to keep him updated about the appeal;[14] in response, the Florida Supreme Court clerk mailed him printouts of the website with instructions as to which menu options should be used (DE38, Appendix N).

On November 10, 2005, the Florida Supreme Court issued its opinion

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[13]Mr. Collins never responded to either of Petitioner's afore-discussed letters, a fact that is conclusively established by the Department of Corrections logs, which provide meticulous detail as to each and every piece of incoming mail sent to death row inmates. In preparation for an equitable tolling argument in the lower courts, Petitioner sought these logs from the Department of Corrections on February 5, 2006; Sergeant Overtrop of Union Correctional Institution responded to Petitioner's request by informing him that he pulled "all logs" from January 1, 2004, until February 6, 2006, and these logs revealed that Petitioner received only five (5) pieces of mail from Mr. Collins during this time period: January 14, 2004, June 16, 2004, July 19, 2004, January 19, 2006, and February 6, 2006 (DE38, Appendix M).

[14]There are no computers accessible to any death-row inmates at Union Correctional Institution.

affirming the denial of the Rule 3.851 appeal and denied the state habeas petition. Shockingly, Mr. Collins **never informed Petitioner, either by legal phone call or by letter, that his appeal had been denied.**[15] Because he was unaware that the appeal had been denied, he again contacted the Florida Supreme Court by letter dated December 21, 2005, in order to inquire about the status of his case and when the mandate from his direct appeal had issued (DE38, Appendix P).[16] In a written communication dated December 28, 2005, the Florida Supreme Court, referring to Case No. SC03-1033 (which was the case number for Petitioner's Rule 3.851 appeal), informed Petitioner that he would need to contact the Florida State Archives in order to obtain the mandate issued in his direct appeal case (DE38, Appendix O). Inexplicably, despite acknowledging that Petitioner's request was also for a status of Case No. SC03-1033, *never* informed him that, in fact, the mandate in the Rule 3.851 appeal had also been issued and that the appeal had been denied on November 10, 2005. And, because he still had no idea that his

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[15]Petitioner received confirmation of this from Sgt. Overtrop pursuant to his request that Overtrop review the phone logs; according to Overtrop, Petitioner received no legal phone calls from Mr. Collins (or anyone else for that matter) in November, 2005 (DE38, Appendix O).

[16]Petitioner believed that the date of the mandate on direct appeal was significant in order for him to be able to ascertain when the federal habeas would be due since he had never heard anything from Mr. Collins about the status of the case. Clearly, this request indicates that Petitioner was making a diligent effort to ascertain how much time he had left on his statute of limitations if and when the Florida Supreme Court were to deny relief (DE38, Appendix Q). Of course, at the time he made his request to the Florida Supreme Court on December 21, 2005, he had no idea that the Court had denied his appeal already and, in fact, mandate had already issued on December 1, 2005.

appeal had been denied, Petitioner, on January 9, 2006, requested permission from the Department of Corrections to visit the "writ room" in order to see if he could ascertain the status of his case from the legal library (DE38, Appendix R); however, the Department of Corrections inexplicable "refused" his request (*Id.*). Because this request to visit the writ room was denied, Petitioner *again* wrote to Mr. Collins on January 9, stating as follows:

> I write this letter to ask that you please let me know the status of my appeals before the Supreme Court of Florida. **Have my appeals been decided yet?**
>
> Please send me the date when the "mandate" was issued in my case.[17] If you could please send me a copy of said "mandate" so that I can determine when the deadline will be to file my 28 U.S.C. Rule 2254 Federal Habeas Corpus Petition, in accordance with all United States Supreme Court and Eleventh Circuit case law and applicable "Antiterrorism and Effective Death Penalty Act," **if my appeals before the Supreme Court of Florida are denied.**
>
> Please be advised that I want to preserve my privilege to federal review of all of my state convictions and sentences.
>
> Mr. Collins, would you also please inform me, as to which United States District Court my 28 U.S.C. Rule 2254 Federal Habeas Corpus Petition will be have to be timely filed in and that court's address?
>
> Thank you very much.

(DE38, Exhibit Q) (emphasis added).

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[17]Petitioner's inquiry of Mr. Collins puts into context his request of the Florida Supreme Court on December 21, 2005, for a copy of the direct appeal mandate. Petitioner did follow through with the Florida Supreme Court's direction that he contact the Florida State Archives in order to get a copy of the direct appeal mandate; on January 27, 2006, Petitioner received the requested documents from the Archives (DE38, Appendix S).

Having still not heard anything from Mr. Collins, having not been informed by the Florida Supreme Court's December 28, 2005, communication, that his appeal had been already denied and that mandate had been issued, and having been inexplicably denied the opportunity to go to the writ room on January 9, 2006, Petitioner again, on January 18, 2006, requested and was granted permission to go to the writ room to attempt to ascertain the status of his case (DE38, Appendix T). It was on this date–January 18, 2006–that Petitioner learned for the first time that his appeal had already been denied over two (2) months earlier. As a result, Petitioner, the following day–January 19, 2006–made an emergency request for a telephone call to Mr. Collins the first thing in the morning because, as Petitioner himself wrote, "It's important!!" (DE38, Appendix U). That request was approved (*id.*). Because he was now aware that his state appeals had been denied over two (2) months earlier, Petitioner, following his visit at the writ room on January 18, 2006, immediately prepared his *pro se* habeas corpus petition, which he mailed to the district court clerk for filing on January 19, 2006.

Coincidentally, Mr. Collins had written a letter to Petitioner which Petitioner received on January 19, 2006 (the same day that Petitioner mailed his *pro se* habeas petition to the district court), requesting that Petitioner fill out the *in forma pauperis* documentation necessary to file a *certiorari* petition in this Court (DE38, Appendix V). By the time Petitioner received this letter, he had already spoken with Mr. Collins in the morning of January 19. In his written response to Mr. Collins's letter on January 20, 2006, Petitioner noted that he was "left to

understand" that Mr. Collins was intent on filing a *certiorari* petition but that it was Petitioner's understanding that the AEDPA statute of limitation was "not tolled" during this period, and therefore advised Mr. Collins "not to file certiorari if doing so affects or jeopardizes my one-year grace period as prescribed by the AEDPA" (DE38, Appendix V).[18]

On January 27, 2006, Petitioner again communicated with Mr. Collins to request information on what Mr. Collins had filed on Petitioner's behalf and to send him copies (DE38, Appendix W), and, on January 30, 2006, again wrote to Mr. Collins with some legal research indicating that the time for seeking *certiorari* from the state court's denial of collateral relief would not toll the AEDPA statute of limitations (DE38, Appendix X). In response to Petitioner's letter of January 20, 2006, Mr. Collins acknowledged that there was a "hurdle" to overcome "concerning operation of AEDPA time limitations," but, expressing a gross and negligent understanding of basic federal habeas law, expressed his view that Petitioner's time for filing his federal habeas "began to run after the case was affirmed [by the Florida Supreme Court] on October 2, 2000" and that therefore "the period had run before my appointment and therefore before your Rule 3.850 motion was filed" (DE38, Appendix Y). Mr. Collins further expressed his understanding that a *certiorari* petition was Petitioner's "only technically timely remedy" and that filing a *certiorari* petition "will have no effect on the viability of

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[18]In reality but unbeknownst to Petitioner, his concern was moot since the Florida Supreme Court had denied relief in November, 2005, and Mr. Collins never informed Petitioner of this denial.

the federal habeas corpus remedy" (*Id.*). In response to this letter, Petitioner, on February 9, 2006, wrote to Mr. Collins:

> I received your letter dated January 31, 2006. You are incorrect in stating that "the one-year statutory time frame for filing my 2254 petition began to run after my case was affirmed on October 5, 2000, by the Florida Supreme Court." As stated on page three of my Petition for a Writ of Certiorari, October 1, 2001, is when the United States Supreme Court denied my initial petition for writ of certiorari and that is when my case became final. That meant that time would be tolled once I filed my 3.850-3.851 motion in the trial court.
>
> Also, Mr. Collins you never told me that my time ran out (expired). I told you to timely file my 28 U.S.C. 2254 Habeas Corpus Petition before the deadline, so that I would not be time-barred.
>
> You never informed me of oral arguments or of the Supreme Court of Florida's November 10, 2005, decision denying my postconviction appeals. You never kept me informed about the status of my case, although you told me that you wold immediately inform me of the court's decision as soon as you heard anything.
>
> Mr. Collins, I filed a motion on January 19, 2006, to preserve my rights because I did not want to be time-barred. Have you heard anything about the aforesaid motion? Do you know what the status of aforesaid motion is?
>
> Mr. Collins, please file my 2254 Habeas Petition immediately. Please do not wait any longer, even though it will be untimely filed at least it will be filed without wasting any more time (valuable time).
>
> Again, please file my 2254 Petition at once.
>
> Your letter is the first time that you have ever mentioned anything to me about my time had [sic] run out, before you were even appointed to represent me, and that my one-year started to run on October 5, 2000.
>
> Please find out the status of my motion that I filed on January 19, 2006, and let me know.

(DE38, Exhibit Z).

B. "Gross Negligence" by Collateral Counsel is an "Extraordinary Circumstance" Warranting Equitable Tolling.

While it is generally true, and Petitioner does not contend otherwise, that garden variety attorney mistakes do not constitute "extraordinary circumstances" to warrant equitable tolling, the issue presented by Petitioner is whether the "gross negligence" found by the Eleventh Circuit does qualify as such a circumstance, and whether any allegation of lawyer negligence or misconduct, short of bad faith, dishonesty, divided loyalty, or mental impairment, can satisfy the definition of an "extraordinary circumstance" such that equitable tolling is warranted.[19] Under the new test set out by the Eleventh Circuit, *no* allegation of lawyer misconduct, even gross misconduct, can qualify for an exceptional circumstance. This truncated holding essentially eviscerates the doctrine of equitable tolling and conflicts with the holdings of numerous other circuits.

At the outset, it is important to note that, until Petitioner's case was pending in the Eleventh Circuit, that court had not yet addressed whether attorney conduct beyond "mere negligence" could constitute an extraordinary circumstance warranting equitable tolling. In *Downs v. McNeil*, 520 F. 3d 1311 (11th Cir. 2008), the Eleventh Circuit held for the first time that attorney misconduct going beyond "mere negligence" can constitute an extraordinary circumstance warranting

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[19]To be sure, Petitioner does not agree that the "gross negligence" found by the Eleventh Circuit fails to satisfy some of the arbitrary criteria set out in the Eleventh Circuit's opinion. For example, in Petitioner's view, "gross negligence" of counsel certainly qualifies as bad faith and demonstrates, at the least, divided loyalties.

equitable tolling. Yet in Petitioner's case, the Eleventh Circuit effectively announced that *Downs* did not really mean what it said and limited its holding to such an extent as to render it meaningless for purposes of a reasoned equitable tolling analysis and to place Petitioner's case in direct conflict with other circuits.

To properly put Petitioner's contentions in this petition into their proper context, it is first important to discuss what the Eleventh Circuit held in *Downs*, and, just as importantly, what it did not hold in *Downs*. At issue in *Downs* was whether the Eleventh Circuit would join those circuits which have allowed equitable tolling due to "some forms of serious attorney misconduct," or whether this Court would agree with the lone circuit –the Seventh Circuit – to adopt a "bright-line approach" refusing to allow equitable tolling when the reason for the late filing is attributable to the misconduct or negligence, no matter how serious, of the defendant's collateral counsel. *Downs*, 520 F. 3d at 1319. After discussing the holdings of the various circuits, the *Downs* court declined to follow the bright-line approach of the Seventh Circuit in favor of an analysis that truly reflects the fact that equitable tolling is, after all, an *equitable remedy*. *Downs*, 520 F. 3d at 1321 ("bright-line rules do not govern the court's exercise of its equitable powers") (citing cases). Hence, the *Downs* court embraced the line of cases from other circuits which have provided a basis for equitable tolling in instances where, for example, the attorney has made misrepresentations to the client, disregarded the client's instructions, refused to return documents, or abandoned the client's case. *Id.* at 1321-22 (discussing cases). After discussing with approval the line of

cases from other circuits, the *Downs* court concluded by holding that "the fact-specific, case-by-case approach taken by the majority of our fellow circuits is better suited to an equitable inquiry than is the bright-line approach to egregious attorney misconduct adopted by the Seventh Circuit[]." *Id.* at 1322 (footnote omitted).

Nothing in *Downs* could be read to state that only allegations of "reckless factual misrepresentation or of lawyer dishonesty" (Attachment A at 9), could, to the exclusion of any other allegation, constitute an extraordinary circumstance warranting equitable tolling. In fact, in *Downs*, the Court stated it would "not dissect the continuing course of conduct in which counsel engaged, bur rather view counsel's behavior as a whole," and acknowledged that while overt dishonesty could constitute equitable tolling, other factors, such as disregarding client instructions or effective abandonment of the client, could also constitute an extraordinary circumstance warranting equitable tolling. *Downs*, 520 F. 3d at 1321-23.

Yet in Petitioner's case, the Eleventh Circuit indeed focused on the lack of allegations of the overt false representations made in *Downs*, to the exclusion of the Petitioner's other equally serious allegations, and faulted Petitioner for not having similar allegations to those in *Downs*:

> no allegations of lawyer negligence or of failure to meet a lawyer's standard of care–in the absence of an allegation and proof of, bad faith, dishonesty, divided loyalty, mental impairment or so forth on the lawyer's part– can rise to the level of egregious attorney misconduct that would entitle Petitioner to equitable tolling. Pure professional negligence is not enough. This case is a pure

> professional negligence case. We decline to extend *Downs* to the different facts of this case.[]

(Attachment A at 9-10)

As the *Downs* court noted, other circuits have extended equitable tolling to circumstances involving some forms of serious attorney misconduct or negligence, and not just to allegations of overt lying by counsel or actual dishonesty. For example, the *Downs* court cited to and discussed *Baldayaque v. United States*, 338 F. 3d 145 (2d Cir. 2003), noting that the Second Circuit, in considering the allegations there, which included the attorney ignoring the directive of the defendant to file a §2255 petition and failing to communicate with the client, determined that the attorney's actions, "taken together," might warrant equitable tolling. *Downs*, 520 F. 3d at 1321. There was nothing in *Baldayaque* that discussed actual lying or overt dishonesty, yet the *Downs* court cited it with approval, as it also cited other similar cases. *See Fleming v. Evans*, 481 F. 3d 1249 (10th Cir. 2007); *United States v. Martin*, 408 F. 3d 1089 (8th Cir. 2005); *United States v. Wynn*, 292 F. 3d 226 (5th Cir. 2002); *Spitsyn v. Moore*, 345 F. 3d 796 (9th Cir. 2003).[20]

By first embracing this line of cases in *Downs* and deciding their reasoning would govern the Circuit's jurisprudence, and then by openly distancing itself

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[20]As the *Downs* court also noted, nothing in this Court's decision in *Lawrence v. Florida*, 549 U.S. 327 (2007), can be read to exclude equitable tolling due to circumstances extending beyond mere attorney negligence. *Downs*, 520 F. 3d at 1319. Here, as the Eleventh Circuit acknowledged, we are dealing with "gross negligence," not garden variety, or "mere" negligence (Attachment A at 9).

from these very cases, the Eleventh Circuit in Petitioner's case effectively returned the Circuit to pre-*Downs* status by enforcing the very "bright-line" rule it rejected in *Downs*. By holding that "no allegation of lawyer negligence or of failure to meet a lawyer's standard of care" – absent bad faith, dishonesty, divided loyalty, or mental impairment on part of the attorney – can rise to the level of "egregious attorney misconduct that would entitle Petitioner to equitable tolling," the panel not only effectively overruled *Downs* and limited it in such an unprecedented way as to render its holding meaningless in cases not involving overt bad faith or dishonesty, but also aligned, once again, the Eleventh Circuit with the Seventh Circuit in its bright-line approach.

The "gross negligence" that the Eleventh Circuit found in Petitioner's case is just as deserving of equitable tolling as the lies and misrepresentations found to warrant an evidentiary hearing in *Downs*. This is not a case of garden-variety or after-the-fact miscalculation, but a flagrant failure by attorney Collins to adhere to his client's request to timely file his habeas petition. Collins gave no advance warning to Petitioner that he would not or could not timely file the habeas petition on time as promised to Petitioner and as Petitioner had repeatedly implored him to do while his appeal was still pending in the Florida Supreme Court. *See Nara v. Frank*, 264 F. 3d 310, 320 (3d Cir. 2001) (noting that evidentiary hearing warranted where petitioner alleged, *inter alia*, that habeas petition filed late because state postconviction counsel told petitioner that there were no time constraints to timely filing and led petitioner to believe a timely petition would be

filed; these "serious allegations" would constitute extraordinary circumstances, if proven to be true). *See also Baldayaque*, 338 F. 3d at 152-53.

Due to Collins's "gross negligence," Petitioner never received any communication that his appeal to the Florida Supreme Court had been denied on November 10, 2005, despite repeated requests to Collins in the preceding months for a status of the case. This failure by Collins to keep Petitioner apprised of the denial of his appeal is not only a violation of the Florida Rules of Professional Conduct,[21] but also constitute grounds for equitable tolling, at least in other circuits. "[A] prisoner's lack of knowledge that the state courts have reached a final resolution of his case can provide grounds for equitable tolling if the prisoner has acted diligently in the manner." *Woodward v. Williams*, 263 F. 3d 1135, 1143 (10th Cir. 2001). *See also Phillips v. Donnelley*, 216 F. 3d 508, 511 (5th Cir.) (Remanding for district court to determine the date on which the petitioner first received notice of the denial of his state appeal), amended in part, 223 F. 3d 797 (5th Cir. 2000); *Knight v. Schofield*, 292 F. 3d 709, 711 (11th Cir. 2002) (prisoner entitled to equitable tolling because, despite diligence, he had not been timely informed of the denial of state collateral relief); *Thompson v. Smith*, 2006 U.S. App. LEXIS 5620 at *12 (11th Cir. 2006) (unpub.) ("When outside forces, such as

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[21] *See* Rule Regulating the Florida Bar 4-1.4 (a)(1), (2) (3) & (4) (A lawyer "shall . . . promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; reasonably consult with the client about the means by which the client's objectives are to be accomplished; keep the client reasonably informed about the status of the matter; promptly comply with reasonable requests for information").

the courts themselves, act independently of the petitioner to prevent him from timely filing a petition for habeas corpus, then, provided that the petitioner has exercised diligence, the district court may properly apply the doctrine of equitable tolling").

Because the Eleventh Circuit's conclusion that "gross negligence" does not qualify as an exceptional circumstance warranting equitable tolling has placed the Eleventh Circuit squarely in conflict with other circuits, and has essentially eviscerated a defendant's entitlement to equitable tolling under certain circumstances, Petitioner submits that certiorari review of the Eleventh Circuit's decision is warranted at this time.

CONCLUSION

Based on the foregoing arguments and authorities, the Petitioner respectfully requests that the Court grant certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari has been furnished by U.S. Mail to Lisa-Marie Lerner, Assistant Attorney General, Office of the Attorney General, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401, on this 13th day of May, 2009.

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ATTACHMENT A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
AUGUST 18, 2008
THOMAS K. KAHN
CLERK

No. 07-13366

D. C. Docket No. 06-20182 CV-PAS

ALBERT HOLLAND, JR.,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(August 18, 2008)

Before EDMONDSON, Chief Judge, MARCUS and PRYOR, Circuit Judges.

PER CURIAM:

Albert Holland (Petitioner), a prisoner on Florida's death row, filed a petition for a writ of habeas corpus in federal district court pursuant to 28 U.S.C. §

2254. The district court dismissed the petition as untimely because it was filed beyond the one-year limitations period provided by 28 U.S.C. § 2244(d)(1). On appeal, Petitioner argues that he was entitled to equitable tolling of the limitations period for filing his federal habeas petition because of egregious conduct by his counsel during his post-conviction proceedings. Seeing no reversible error, we affirm the district court's dismissal of Petitioner's petition.

I. Background

In 1996, Petitioner was convicted of first-degree murder, attempted first-degree murder, attempted sexual battery, and armed robbery.[1] The state trial court sentenced Petitioner to death on the first-degree murder conviction. In 2000, the Florida Supreme Court affirmed Petitioner's convictions and sentences, see Holland v. State, 773 So. 2d 1065 (Fla. 2000), and the United States Supreme Court denied *certiorari* on 1 October 2001. See Holland v. Florida, 122 S. Ct. 83 (2001).[2]

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[1] This conviction followed Petitioner's second trial on the charged conduct. The Florida Supreme Court overturned Petitioner's prior conviction and sentence on grounds unrelated to this appeal.

[2] In November 2001, the state circuit court appointed attorney Bradley Collins to represent Petitioner.

On 19 September 2002, Petitioner filed a motion for post-conviction relief in the state trial court. The state court denied relief, and Petitioner appealed to the Florida Supreme Court. Petitioner also petitioned the Florida Supreme Court for a writ of habeas corpus.[3] The state supreme court held oral argument on 10 February 2005.

While his post-conviction proceedings were pending in the Florida Supreme Court, Petitioner sent two letters to Collins–one on 3 March 2005, the other on 15 June 2005–in which he inquired about the status of his appeal and expressed concern about the timely filing of his federal habeas petition. Collins did not respond to Petitioner's letters.

In October 2005, Petitioner also contacted the Florida Supreme Court about the use of its website "so that he could secure the assistance of outside supporters to keep him updated about the appeal."[4] In response, the clerk of the Florida Supreme Court mailed Petitioner printouts of the website with instructions about the menu options to be used.

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[3]Unsatisfied with Collins's representation, Petitioner filed a *pro se* motion to remove Collins as counsel and to appoint other counsel in February 2004 and again in June 2004. The state opposed these motions, and the state court denied them.

[4]As an inmate on death row, Petitioner lacked access to a computer.

On 10 November 2005, the Florida Supreme Court affirmed the denial of Petitioner's motion for post-conviction relief and denied his habeas petition; the mandate issued on 1 December 2005.[5] See Holland v. State, 916 So. 2d 750 (Fla. 2005). Unaware of the state supreme court's decision, Petitioner–on 9 January 2006–wrote to Collins a third time regarding the status of his appeal and the status of his federal habeas petition. Collins had not responded to Petitioner's letter by 19 January, at which time Collins spoke to Petitioner.

On 18 January 2006, during a visit to the prison's writ room, Petitioner learned that the Florida Supreme Court denied his appeal. Petitioner telephoned Collins the next morning.[6] Later that day, Petitioner, acting *pro se*, filed a habeas petition in federal district court.

About two months later, Petitioner moved the district court to discharge Collins and to appoint new counsel. In June 2006, the district court allowed Collins to withdraw and appointed other counsel to represent Petitioner. Later, in response to a federal order to show cause, Petitioner, through current counsel (that is, not Collins), filed a pleading asserting that Petitioner was entitled to equitable

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[5]On 8 February 2006, Petitioner, through Collins, sought review of the denial of state post-conviction relief in the United States Supreme Court. The Court denied *certiorari* on 17 April 2006.

[6]Collins had written a letter to Petitioner received by Petitioner on 19 January 2006 expressing Collins's intention to file a petition for *certiorari* in the United States Supreme Court.

tolling of the limitations period for filing his federal habeas petition. The district court concluded that equitable tolling was not warranted and dismissed Petitioner's petition as untimely. The district court then granted a certificate of appealability on the following issue: "whether equitable tolling enlarged the one-year time period for [Petitioner] to file his 28 U.S.C. § 2254 petition."

II. Standard of Review

We review the district court's denial of equitable tolling *de novo*. Drew v. Dep't of Corr., 297 F.3d 1278, 1283 (11th Cir. 2002). We review a trial court's decision whether to conduct an evidentiary hearing on an equitable tolling claim for an abuse of discretion. Id.

III. Discussion

Pertinent to this case, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), imposes a one-year statute of limitations for filing a federal habeas petition that runs from the date on which the state court judgment of conviction becomes final. 28 U.S.C. §

2244(d)(1)(A). A judgment of conviction becomes final when "the Supreme Court has had an opportunity to review the case or the time for seeking review has expired." Coates v. Byrd, 211 F.3d 1225, 1226 (11th Cir. 2000). Under 28 U.S.C. § 2244(d)(2), the limitations period is tolled for the time during which "a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending."

That Petitioner filed his federal habeas petition beyond the one-year limitations period provided by 28 U.S.C. § 2244(d)(1) is undisputed. Petitioner's limitations period began running on 1 October 2001, the date on which the United States Supreme Court denied *certiorari* on the direct appeal of Petitioner's convictions and sentences. Petitioner filed his motion for state post-conviction relief–a motion which tolled the limitations period–on 19 September 2002: 353 days later; thus, eleven months and nineteen days of the one-year period had expired before this state court filing.

Petitioner's post-conviction motion was denied, and the Florida Supreme Court affirmed the denial on 10 November 2005; the mandate issued on 1 December 2005. So, Petitioner then had eleven days, or until 12 December 2005, to file timely his federal habeas petition. Petitioner filed his petition on 19 January 2006: 38 days late.

Nonetheless, Petitioner's federal habeas petition may still be considered timely if he is entitled to equitable tolling. "Equitable tolling can be applied to prevent the application of AEDPA's statutory deadline when 'extraordinary circumstances' have worked to prevent an otherwise diligent petitioner from timely filing his petition." Helton v. Sec'y for Dep't of Corr., 259 F.3d 1310, 1312 (11th Cir. 2001). Equitable tolling is an extraordinary remedy that must be applied sparingly. Drew, 297 F.3d at 1286. "The burden of establishing entitlement to this extraordinary remedy plainly rests with the petitioner." Id. "To be entitled to equitable tolling, [Petitioner] must show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." Lawrence v. Florida, 127 S. Ct. 1079, 1085 (2007). A truly extreme case is required.

Petitioner points to several things that he contends demonstrate extraordinary circumstances: (1) Collins's alleged "egregious conduct"; (2) the Florida Supreme Court's failure to conduct oversight of his appointed attorney; (3) the state clerk's office's failure to inform him that his appeal had been denied; and (4) the Department of Corrections's refusal to allow Petitioner access to the "writs

room."[7] Petitioner argues that these circumstances are extraordinary and both beyond his control and unavoidable despite his diligent efforts. We disagree.

On Collins's alleged "egregious conduct," this Court has said repeatedly that even attorney negligence is not a basis for equitable tolling. Helton, 259 F.3d at 1313; Steed v. Head, 219 F.3d 1298, 1300 (11th Cir. 2000); Sandvik v. United States, 177 F.3d 1269, 1271-72 (11th Cir. 1999); see also Lawrence, 127 S. Ct. at 1085 ("Attorney miscalculation is simply not sufficient to warrant equitable tolling, particularly in the postconviction context where prisoners have no constitutional right to counsel."). But recently we addressed whether attorney misconduct going beyond "mere negligence" may constitute an extraordinary circumstance warranting equitable tolling. See Downs v. McNeil, 520 F.3d 1311 (11th Cir. 2008).

In Downs, we vacated a district court order dismissing a habeas petition as untimely based on counsel's alleged behavior that "ran the gamut from acts of mere negligence to acts of gross negligence to acts of outright willful deceit." Id. at 1323. Although we viewed counsel's behavior as a whole, it is material to the Downs decision that the alleged acts of attorney misconduct included affirmative

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[7] Petitioner also notes his "long history of mental illness" as a factor in evaluating his claim for equitable tolling. Petitioner does not explain how his "mental illness" had a material effect on his failure to file timely his habeas petition.

misrepresentations by counsel about the filing of a state habeas petition: such a filing would have tolled the federal habeas limitations period.[8] Id. at 1323-24. In Downs, we repeatedly and specifically noted counsel's lie: one that deprived the unknowing petitioner of as many as three months of his limitations period before it was discovered.[9] Id.

In contrast to Downs, Petitioner made in the district court no allegation of knowing or reckless factual misrepresentation or of lawyer dishonesty. Instead, Petitioner's allegations are limited to Collins's failure to communicate with Petitioner on the status of his case and to Collins's failure to file a federal habeas petition timely, despite repeated instructions to do so. We will assume that Collins's alleged conduct is negligent, even grossly negligent. But in our view, no allegation of lawyer negligence or of failure to meet a lawyer's standard of care–in the absence of an allegation and proof of bad faith, dishonesty, divided loyalty, mental impairment or so forth on the lawyer's part–can rise to the level of

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[8] In two recent unpublished decisions, we reached similar conclusions. See Kicklighter v. United States, No. 07-14945, 2008 WL 2421728 (11th Cir. June 17, 2008) (unpublished); Hammond v. Frazier, No. 07-10573, 2008 WL 1891478 (11th Cir. Apr 30, 2008) (unpublished). Both cases involved allegations of affirmative misrepresentations by counsel. Kicklighter, 2008 WL 2421728, at *1 (petitioner alleged that counsel "lied to him about whether the appeal had been filed"); Hammond v. Frazier, 2008 WL 1891478, at *1 (petitioner alleged that "post-conviction counsel falsely told him that counsel had filed the state habeas petition").

[9] The defendant in Downs missed the deadline for filing his habeas petition by only eight days.

egregious attorney misconduct that would entitle Petitioner to equitable tolling. Pure professional negligence is not enough. This case is a pure--professional--negligence case. We decline to extend Downs to the different facts of this case.[10]

In a similar way, we are not persuaded that the alleged acts of the Florida Supreme Court or the Department of Corrections would entitle Petitioner to equitable tolling. The alleged failure by the Florida Supreme Court to conduct oversight of Petitioner's appointed attorney is not an "extraordinary circumstance" entitling Petitioner to equitable tolling. See Lawrence, 127 S. Ct. at 1085-86 (that a state court appoints and supervises counsel "does not make the State accountable for a prisoner's delay"). And Petitioner presents no evidence that he ever asked--before the limitations period for filing his federal habeas petition had run--that the Florida Supreme Court provide him directly with notice of the decision on his post-conviction appeal. The letter that Petitioner presents to support his contention that the Florida Supreme Court should have provided him with notice was dated 21 December 2005: nine days after Petitioner's deadline for

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[10]We recall the maxim that "[e]very exception not watched, tends to take the place of the rule." See S. Peloubet, Legal Maxims 294 (1884) (1985 ed.) ("Toute exception non surveillee tend a prendre la place du principe."). We are attempting to keep the exception for extraordinary circumstances from being the rule.

filing his federal habeas petition had passed. Likewise, the incident in which the Department of Corrections allegedly denied Petitioner access to the "writs room" took place on 9 January 2006, 28 days beyond the limitations period. Even assuming the allegations are true, Petitioner cannot reasonably argue that the incidents to which he draws our attention–both occurring after the limitations period had run–prevented him from filing a federal habeas petition timely.

We are satisfied that the district court did not err in declining to hold an evidentiary hearing on the issue of equitable tolling. "Section 2244 of Title 28 of the United States Code does not require a hearing on the issue of time-bar or equitable tolling, so the decision as to whether to conduct an evidentiary inquiry is a matter left to the sound discretion of the district court." Drew, 297 F.3d at 1292. Petitioner has offered no reason to believe an evidentiary hearing would help him demonstrate the required extraordinary circumstances to warrant equitable tolling.

IV. Conclusion

For the foregoing reasons, the district court's dismissal of Petitioner's petition for a writ of habeas corpus as untimely is affirmed.

AFFIRMED.

ATTACHMENT B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 13 2009
THOMAS K. KAHN
CLERK

No. 07-13366-p

ALBERT HOLLAND, JR.,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

On Appeal from the United States District Court for the Southern District of Florida

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: EDMONDSON, Chief Judge, MARCUS and PRYOR, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

J. E. Edmondson

CHIEF JUDGE

ORD-42
(2/05)

B

ATTACHMENT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 06-20182-CIV-SEITZ

ALBERT HOLLAND, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____/

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AS UNTIMELY FILED

THIS MATTER is before the Court on Respondent State of Florida's (the "State") Response to Order to Show Cause [DE-14], in which it argues that Petitioner's application for a writ of habeas corpus [DE-1] is untimely and should be dismissed. Petitioner filed a reply [DE-35], arguing that his petition is timely under a theory the United States Supreme Court recently rejected and asking the Court to apply equitable tolling, in any event. The Court allowed the State to file a sur-reply responding to Petitioner's equitable tolling argument. Upon review of the record, the applicable law, and the pertinent facts of this case, the Court finds that Petitioner's application for habeas relief is untimely and should not be equitably tolled.

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about August 16, 1990, Petitioner Albert Holland was indicted in Broward County, Florida, on four counts – including first-degree premeditated murder. A jury convicted him on all four counts, and he was sentenced to death on the first-degree murder count, life imprisonment for sexual battery, 40 years for attempted first-degree murder, and 17 years for armed robbery. On appeal, the Florida Supreme Court reversed the convictions and remanded the case for a new trial. *See generally Holland v. State*, 636 So. 2d 1289 (Fla. 1994).

On retrial, another jury found Petitioner guilty.[1] Once again, the trial court sentenced Petitioner to death on the first-degree murder count. This time, on appeal, the Florida Supreme Court affirmed Petitioner's conviction and death sentence, and the United States Supreme Court denied *certiorari* on October 1, 2001. *See generally Holland v. State*, 773 So. 2d 1065 (Fla. 2000), *cert. denied*, 534 U.S. 831 (2001).

On or about September 19, 2002,[2] 353 days later, Petitioner filed his application for state post-conviction relief, which tolled the one-year time limit for filing his federal habeas petition under 28 U.S.C. § 2254. The court denied relief, and on appeal, the Florida Supreme Court affirmed this decision. *See generally Holland v. State*, 916 So. 2d 750 (Fla. 2005). The mandate issued on December 1, 2005. Petitioner then sought review of the denial of state post-conviction relief in the United States Supreme Court. The United States Supreme Court denied *certiorari* on April 17, 2006. *See generally Holland v. Florida*, 126 S. Ct. 1790 (2006). In the meantime, on January 19, 2006, Petitioner, acting *pro se*, filed the present federal habeas petition.

II. DISCUSSION

A. The Pendency of a *Cert* Petition in the United States Supreme Court Does Not Toll the One-Year Time Limit for Filing a Federal Habeas Petition Under § 2244.

A prisoner in state custody has one year to seek federal habeas corpus relief once his state court judgment of conviction becomes final. *See* 28 U.S.C. § 2244(d). The judgment becomes final when "the Supreme Court has had an opportunity to review the case or the time for seeking review has expired." *Coates v. Byrd*, 211 F.3d 1225, 1226 (11th Cir. 2000) (citing *Rhine v. Boone*, 182 F.3d 1153, 1156 (10th Cir.1999)). Under 28 U.S.C. § 2244(d)(2), the limitations period is tolled for the time during which "a

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[1] On the sexual battery count, a jury found Petitioner guilty of the lesser offense of attempted sexual battery.

[2] The State has identified this date as the date on which Petitioner filed his state-court motion. Petitioner has identified September 17, 2002 as the date on which he filed his state-court motion.

properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending."

Petitioner's judgment and conviction became final on October 1, 2001. Petitioner filed his application for state post-conviction relief 353 days later, on September 19, 2002. The filing of his state habeas petition stopped the clock temporarily. Once the Florida Supreme Court issued its mandate on December 1, 2005, affirming the denial of state habeas relief, Petitioner had just 12 more days – until December 13, 2005 – to file his federal habeas petition. Petitioner did not file his federal petition until more than a month later, on January 19, 2006.

Petitioner had argued to this Court that the filing and pendency of his *cert* petition in the United States Supreme Court tolled his one-year time limit for filing his federal habeas petition. The parties had been awaiting a decision from the United States Supreme Court on this very question. On February 20, 2007, the United States Supreme Court squarely held that the time during which a *cert* petition is pending does not toll the one-year statute of limitations pursuant to 28 U.S.C. § 2244(d). *Lawrence v. Florida*, 127 S. Ct. 1079, 1081 (2007). Thus, Petitioner's first argument fails.

B. Equitable Tolling Is Not Warranted in This Case.

Although the United States Supreme Court has yet to decide whether the doctrine of equitable tolling applies to extend the one-year limitations period set forth in 28 U.S.C. § 2244, the Eleventh Circuit has held that it does. *Steed v. Head*, 219 F.3d 1298, 1300 (11th Cir. 2000). "Equitable tolling is an extraordinary remedy which is typically applied sparingly." *Id.* A district court can allow equitable tolling where a movant files a habeas petition untimely "because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." *Id.* (quoting *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999)) (emphasis added). However, this should be done only in "rare and exceptional circumstances," such as when the State's conduct prevents timely filing. *Lawrence v. Florida*, 421 F.3d 1221, 1226 (11th Cir. 2005) *aff'd*, 127 S. Ct. 1079 (2007); *see also Arce v. Garcia*, 400

F.3d 1340, 1349 (11th Cir. 2005) (noting that, in order to invoke equitable tolling, "courts usually require some affirmative misconduct").

Petitioner bears the burden of establishing his entitlement to this extraordinary remedy. *Drew v. Dep't of Corr.*, 297 F.3d 1278, 1286 (11th Cir. 2002), *overruled in part on other grounds by Sykosky v. Crosby*, 187 Fed. Appx. 953 (11th Cir. 2006). Here, Petitioner posits five arguments for equitable tolling: (1) the Florida Supreme Court's failure to oversee his former State-appointed attorney, Bradley M. Collins, Esq.;[3] (2) the Florida Supreme Court's Clerk's Office's failure to inform him that mandate had issued in his post-conviction appeal; (3) the Department of Corrections' ("DOC") "refusal" to allow him access to the "Writs" room; (4) Collins' failure to keep him informed of the status of his case and to timely file the federal habeas petition; and (5) his long history of mental illness, which prevented him from timely filing his petition. As shown below, all of these arguments lack merit.

1. The Florida Supreme Court's failure to oversee Collins

Petitioner claims that the Florida Supreme Court's failure to oversee Collins' efforts should allow for equitable tolling. Petitioner is incorrect. This does not constitute an extraordinary circumstance warranting equitable tolling. *See Lawrence*, 421 F.3d at 1226 (State's provision of an inadequate or incompetent attorney is not a basis for equitable tolling).

2. The Florida Supreme Court's failure to inform him that mandate had issued

Petitioner next argues that the Florida Supreme Court's failure to advise him that mandate had issued in his post-conviction appeal likewise should allow for equitable tolling. This argument also misses its mark. Petitioner's situation is distinguishable from the scenario in *Knight v. Schofield*, 292 F.3d 709, 710-11 (11th Cir. 2002), in which the Clerk of the Georgia Supreme Court specifically assured inmate Knight that he would be notified as soon as a decision in his case issued, but inadvertently sent

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[3] Collins was appointed for post-conviction purposes when the Office of Capital Collateral Regional Counsel - South withdrew from Petitioner's case because of caseload conflict.

notice of the decision to the wrong person. Knight showed diligence by trying to contact the Clerk when he never received a response. *Id.* at 711. Accordingly, the Eleventh Circuit reversed the district court's denial of equitable tolling, finding that "[u]ntil the clerk responded, Knight had no way of knowing that his state remedies had been exhausted." *Id.* at 711.

Here, Petitioner never argues that someone in the Clerk's Office promised to inform him of the outcome of his case. Further, there is no evidence that Petitioner ever contacted the Florida Supreme Court to request a copy of its decision and/or mandate denying post-conviction relief. Petitioner did contact the Florida Supreme Court for other reasons, though – for example, (1) to seek Collins' removal as his attorney (*i.e.*, Feb. 23 and June 17, 2004); and (2) to request copies of various pleadings, other court filings, and dates of Orders (*i.e.*, Nov. 17 and Nov. 24, 2003; Jan. 23, Apr. 29, and Aug. 26, 2004). (Pet'r's App. [DE-38] I and J.) Just as Petitioner directly sought to have the Florida Supreme Court send him certain information, he could have asked it to send him notice of the mandate denying state post-conviction relief.[4]

3. The DOC's alleged refusal to allow Petitioner access to the "Writs" room

Petitioner alleges that the DOC denied him access to the "Writs" room, and that this should serve

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[4] In his reply, Petitioner notes, without any evidentiary support, that he contacted the Florida Supreme Court in October 2005 to determine how to find his case on its website so that he could "secure the assistance of outside supporters to keep him updated about the appeal." (Pet'r's Reply [DE-35] at 18). He has only filed in the record copies of certain pages of the website apparently sent to him, without offering any evidence to show that he needed the website to secure "outside supporters." (Pet'r's App. N.) He also does not discuss what efforts he made to find such "outside supporters" once he received information about the website or how these outside supporters were going to keep him apprised of the status of his case.

Petitioner also conflates a communication regarding the direct appeal of his conviction and sentence on re-trial with his case for post-conviction relief. He emphasizes a letter he sent to the Florida Supreme Court on December 21, 2005, which he does not include in his Appendix. The Florida Supreme Court (Office of the Clerk) sent Petitioner a response to this letter, which Petitioner includes as Appendix P. The response noted that Petitioner had inquired as to the date "Mandate issued in [Case No.] SC89922 [the direct appeal of his conviction and sentence on re-trial]." (Pet'r's App. P.) In the response, the Clerk of the Court advised Petitioner that he needed to contact the Florida State Archives, as the case file had been sent there. (*Id.*) Contrary to Petitioner's characterization of the response as "acknowledging that Petitioner's request was also for a status of Case No. SC03-1033 [regarding his motion for state post-conviction relief]," the text of the Clerk's response does not so indicate.

as a basis for equitable tolling. Counsel for the State asserts that a notation of "refused" on the "Northeast Unit Writ Room Callout" sheet means that the inmate refused, not that prison officials denied him access to the room. (State's Sur-Reply ¶ 9.) The Court has no way of verifying this information; however, the mere assertion that the DOC denied Petitioner access to the "Writs" room does not constitute an extraordinary circumstance such that equitable tolling is justified. This allegation is similar to an allegation of deficiencies in or lack of access to a prison law library[5] – which the Eleventh Circuit has held does not provide a basis for equitable tolling, without more. *Helton v. Sec'y for Dep't of Corr.*, 259 F.3d 1310, 1313-14 (11th Cir. 2001) (inmate's bare allegation of prison library's deficiency insufficient; no evidence as to when inmate learned of alleged deficiency or any efforts taken to remedy such deficiency); *Akins v. United States*, 204 F.3d 1086, 1090 (11th Cir. 2000) (prisoner's mere inability to access law library is not, in itself, an unconstitutional impediment; inmate must show such inability caused actual harm); *see also Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998) (inmate offered no specificity as to allegation of lack of access to legal materials; "[i]t is not enough to say that the Minnesota facility lacked all relevant statutes and case law or that the procedure to request specific materials was inadequate").

Here, Petitioner offers no specific information about the connection between his denial of access to the "Writs" room and the delay in filing his federal habeas petition. He also does not discuss his efforts to gain access to the "Writs" room once he was denied: did he seek out a reason for the denial? what was the response? how many times did he try to gain access to the room after the denial? was he denied each time? what was the reason given for the subsequent denials? Petitioner provides nothing but the bald assertion of his lack of access to the room. This is insufficient to establish an entitlement to equitable tolling.

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[5] The Court assumes that the "Writs" room is a type of prison law library.

4. Collins' failures as Petitioner's appointed counsel

Petitioner asserts that Collins failed to timely file the instant habeas petition and failed to keep him informed of the status of his case, and that such failures should allow for equitable tolling. It is well-settled that attorney negligence in calculating deadlines and understanding the law on habeas relief is not a basis for equitable tolling. *Helton*, 259 F.3d at 1313 (agreeing that attorney mistake does not warrant equitable tolling); *Steed*, 219 F.3d at 1300 ("[a]ny miscalculation or misinterpretation . . . in interpreting the plain language of the statute does not constitute an extraordinary circumstance sufficient to warrant equitable tolling"). As for Collins' alleged failure to keep Petitioner informed of the status of his case, the record shows that Collins met with Petitioner on death row and communicated with him in writing on several occasions,[6] provided to Petitioner a detailed, written explanation of the strategy for the case, pursued state collateral relief for Petitioner, and filed a petition for a writ of *certiorari* from the United States Supreme Court. Collins had also prepared a proposed federal habeas petition on Petitioner's behalf and sent it to Petitioner for his review, "suggesting that Holland either sign the Petition for filing or indicate that he would prefer [Collins] comply with Holland's repeated requests that [Collins] move the trial court for leave to withdraw as counsel of record."[7] (State's App. [DE-41] Ex. 1.) Petitioner never responded to Collins' correspondence. (*Id.*)

Rather than cooperate with Collins, Petitioner filed numerous *pro se* motions during the time Collins represented him.[8] He repeatedly expressed his desire for Collins to withdraw from the case and

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[6] The record evidence shows that Collins wrote at least eight letters to Petitioner – one undated letter (but sometime after May 30, 2002); one letter on December 23, 2002; one letter on January 22, 2003; letters on January 14, June 15, and July 19, 2004; and letters on January 18 and January 31, 2006.

[7] This is taken from paragraph (d) of Collins' March 24, 2006 motion to withdraw as Petitioner's counsel. It appears that, had Petitioner signed the document Collins drafted, his federal petition would still have been late. Even so, as discussed earlier, attorney negligence in filing a habeas petition does not constitute an extraordinary circumstance.

[8] A defendant does not have a right to "hybrid" representation – that is, to proceed *pro se* while simultaneously being represented by an attorney. *Cross v. United States*, 893 F.2d 1287, 11291-92 (11th Cir. 1990).

actively sought Collins' removal by filing motions to this effect on February 23 and June 17, 2004. Indeed, according to Collins, Petitioner "has complained of conflicts with every counsel he has had since the beginning of his case, including trial counsel in his first trial and again different counsel in his retrial."[9] (*Id.*)

Even if Collins was so careless in keeping Petitioner apprised of his case that his behavior could be characterized as an "extraordinary circumstance," Petitioner must still show that he acted with due diligence in order to be afforded equitable tolling. The record shows that he wrote a few letters to his attorney, but he did not seek any help from the court system to find out the date mandate issued denying his state habeas petition, nor did he seek aid from "outside supporters" he claimed he wanted to enlist to help him. This does not demonstrate due diligence. *See Powe v. Culliver*, Case No. 05-17150, 2006 WL 3253960, at *4 (11th Cir. Sep. 19, 2006) (finding "arguably extraordinary" circumstances because of attorneys' failures to respond to petitioner's letters, but holding that petitioner did not show due diligence – where he wrote just three letters to his attorneys, did not seek further help from the trial court, and failed to file his state habeas petition on his own, even without a copy of his trial transcript).

5. Petitioner's long history of mental illness

In his brief, Petitioner alludes to his long history of mental illness as a basis for equitable tolling. Petitioner must be able to establish a causal connection between his mental incapacity and his ability to file a petition timely; the mere contention of mental incapacity, without more, is insufficient. *Lawrence*, 421 F.3d at 1226-27. Petitioner has offered no such connection. Indeed, as the State points out, Petitioner's conduct belies any claim that his mental illness prevented him from discovering through appropriate diligence the date his post-conviction appeal was decided and mandate issued. Petitioner has

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[9] This statement is taken from a letter written by Collins' attorney, Kevin J. Kulik, in response to Petitioner's complaint to The Florida Bar regarding Collins. The Court notes that The Florida Bar did not initiate an investigation of Collins' conduct, finding that the issues Petitioner raised "did not rise to the standard of a violation of The Rules Regulating The Florida Bar." (Pet'r's App. H.)

repeatedly sought to represent himself, filing several *pro se* motions and other documents with the Court even while represented by counsel. He has written numerous, cogent letters to counsel, the DOC, the courts, and The Florida Bar (complaining about his attorney's alleged incompetence). He has sought from the Florida Supreme Court copies of various pleadings and other filings in his state habeas case. What this shows is that Petitioner was certainly capable of using due diligence to ascertain his filing deadline for the instant habeas petition, but did not. Accordingly, it is hereby

ORDERED that:

(1) Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 [DE-1] is DENIED AS UNTIMELY FILED;

(2) All pending motions not otherwise ruled upon in this Order are DENIED AS MOOT; and

(3) This case is CLOSED.

DONE and ORDERED in Miami, Florida, this 27th day of April, 2007.

PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record